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No. 84-____

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1984

SHERIFF OF THE COUNTY OF NEWAYGO, State of Michigan, PROSECUTING ATTORNEY FOR THE COUNTY OF NEWAYGO, State of Michigan, STATE OF MARYLAND,

Petitioners,

v

MARVIN ROBERT DEUR,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE MICHIGAN SUPREME COURT AND APPENDIX

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105 pp

QUESTION FOR REVIEW

I

WHETHER THE NON-FUGITIVE PROVISIONS OF THE UNIFORM CRIMINAL EXTRADITION ACT ARE VALID ONLY WHEN THE ACCUSED IS CHARGED WITH COMMITTING AN ACT IN THE ASYLUM STATE WITH THE SPECIFIC INTENT THAT SUCH ACT RESULT IN A CRIME IN THE DEMANDING STATE.

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OPINIONS BELOW

The unreported opinion of the Newaygo County, Michigan, Circuit Court was entered on February 9, 1982. It appears beginning at App. 20a. The unreported judgment and order of the Newaygo County, Michigan, Circuit Court was entered on February 24, 1982 and appears beginning at App. 28a. The opinion of the Michigan Court of Appeals is reported at 125 Mich App 642 (1983) and is reproduced beginning at App. 13a. The opinion of the Michigan Supreme Court is not yet officially reported. It appears beginning at App. 1a.

JURISDICTION

The Michigan Supreme Court's opinion was filed December 28, 1984, and released after editorial work by the Clerk's office

on January 17, 1985. This petition is filed within 90 days of the date of judgment. U. S. Supreme Court Rule 20.2 and 28 USC § 2101(c).

Because Respondent raised constitutional challenges to his extradition, and because the Uniform Criminal Extradition Act is a federal statute (as more fully explained in Argument I, *infra*), this Court's jurisdiction is based on 28 USC § 1257(3), which provides in pertinent part as follows:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows: • • •
>
> > "(3) By writ of certiorari, . . . where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States."

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

1. U. S. Const., ART I, § 10, cl 3 (in pertinent part):

   "No State shall, without the Consent of Congress, . . . enter into any Agreement or Compact with another State . . . ."

2. The Crime Control Consent Act of 1934, 4 USC § 112(a):

   "The consent of Congress is hereby given to any two or more States to enter into agreements or compacts for cooperative effort and mutual assistance in the prevention of crime and in the enforcement of their respective criminal laws and policies . . . ."

3. Maryland Code Annotated, Art 27, § 388:

"Every person causing the death of another as the result of the driving, operation or control of an automobile, motor vehicle, motor boat, locomotive, engine, car, street car, train or other vehicle in a grossly negligent manner, shall be guilty of a misdemeanor to be known as 'manslaughter by automobile, motor vehicle, motor boat, locomotive, engine, car, street car, train or other vehicle,' and the person so convicted shall be sentenced to jail or in the house of correction for not more than three years, or be fined not more than $1,00.00 or be both fined and imprisoned.

"In any indictment or warrant for manslaughter by automobile, motor vehicle, motor boat, locomotive, engine, car, street car, train or other vehicle, it shall not be necessary to set forth the manner and means of death. It shall be sufficient to use a formula substantially to the following effect: 'That A-B on the .... day of ....., 19.. at the County (City) aforesaid unlawfully in a grossly negligent manner did kill and slay C-D.'"

4. The Uniform Criminal Extradition Act, MCLA 780.1 *et seq;* MSA 28.1285(1) *et seq* is reproduced in full in the Appendix beginning at App. 30a. Provisions of particular relevance include the following:

MCLA 780.3; MSA 28.1285(3):

"SEC 3. No demand for extradition of a person charged with a crime in another state shall be recognized by the governor unless in writing, accompanied by the following papers:

(1) Governor's requisition under the seal of the state;

(2) Prosecutor's application for requisition for the return of a person charged with crime, wherein shall be stated:

(a) The name of the person so charged;

(b) The nature of the crime;

(c) The approximate time, place and circumstances of its commission;

(d) That the accused was present in demanding state at the time of commission of alleged crime;

(e) That he thereafter fled from the state;

(f) The state in which he is believed to be, including the location of the accused therein, at the time the application is made; certifying that, in the opinion of the said prosecuting attorney, the ends of justice require the arrest and return of the accused to the demanding state for trial, and that the proceeding is not instituted to enforce a private claim;

(3) Verification by affidavit of said application, which shall be accompanied by certified copies of the indictment returned, or information and affidavit filed, or of the complaint made to the judge or magistrate, and the warrant issued thereupon, stating the offense with which the accused is charged, or of the judgment of conviction or of a sentence imposed in execution thereof, together with a statement by executive authority or the demanding state that the person claimed has escaped from confinement or has broken the terms of his bail, probation or parole. Affidavits or documents as the prosecutor may deem proper may be submitted with such application;

(4) Executive warrant, under the seal of the state, authorizing agent, therein named, to receive the person demanded;

(5) The indictment, information, or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state; and the copy of indictment, information, affidavit, judgment or conviction or sentence must be authenticated by the executive authority making the demand."

MCLA 780.3a; MSA 28.1285(3-1/2):

"SEC. 3a. The governor of this state may also surrender, on demand of the executive authority of any other state, any person in this state *charged in such other state in the manner provided in section 3 with committing an act in this state, or in a third state, intentionally resulting in a crime* in the state whose executive authority is making the demand, and the provisions of this act not otherwise inconsistent shall apply to such cases, even though the accused was not in that state at the time of the commission of the crime, and has not fled therefrom, and the requirements contained in subdivisions (d) and (e) of section 3 of this act shall not apply to such cases." (Emphasis added.)

STATEMENT OF THE CASE

Nature of the Case and Course of Proceedings

This is a habeas corpus action brought under Michigan law in which Respondent Deur challenges a proposed non-fugitive extradition pursuant to the Uniform Criminal Extradition

Act (UCEA). Respondent Deur has been charged in a grand jury indictment in the State of Maryland with the criminal misdemeanor offense of manslaughter by motor vehicle as the result of a motor vehicle accident involving a vehicle owned by him. As applied to the instant case, the UCEA (as adopted in Michigan, MCLA 780.3a) provides:

> "The governor of [Michigan] may also surrender, on demand of the executive authority of [Maryland] any person in [Michigan] charged in [Maryland] in the manner provided in section 3 with committing an act in [Michigan] . . . intentionally resulting in a crime in [Maryland] . . . ."

Pursuant to procedures outlined in the UCEA (MCLA 780.3), Maryland officials sent to the Governor of the State of Michigan the following documents: The Maryland Governor's requisition (App. 48a); the Maryland Governor's warrant (App. 47a); a copy of the Maryland grand jury indictment (App. 51a); and a copy of the Maryland prosecutor's application for requisition for return of Respondent Deur, with supporting documents (pertinent portions reproduced at App. 49a).

After receiving this information from the State of Maryland, the Governor of Michigan exercised his discretion and issued his Executive Warrant to the Sheriff of Newaygo County, Michigan, authorizing the arrest of Respondent Deur (App. 45a). MCLA 780.6. Pursuant to the provisions of the UCEA which permit a person arrested under such a warrant to challenge the legality of his arrest (MCLA 780.9), Respondent Deur instituted in the Newaygo County, Michigan, Circuit Court a complaint for a writ of habeas corpus under Michigan law. See Complaint, App. 42a. In the habeas corpus proceeding, Respondent Deur alleged that the extradition did not conform to the provisions of the UCEA and that the extradi-

tion would violate the Fourth, Fifth and Fourteenth Amendments of the Constitution of the United States (App 44a).

Throughout the litigation the primary inquiry has been the proper interpretation of the statutory language, " . . . charged . . . with committing an act in [Michigan] intentionally resulting in a crime in [Maryland] . . . ."

The Newaygo County, Michigan, Circuit Court held a hearing and issued an opinion (App. 20a) interpreting the UCEA and concluding that the extradition documents, "do not by any standard of evidence, show that [Respondent Deur] committed any act in the State of Michigan intentionally resulting in the crime with which he is charged in the State of Maryland." Petitioners appealed to the Michigan Court of Appeals which issued an opinion (App. 13a) reversing the Circuit Court and concluding, *inter alia*, App. 17a:

> "The adverb 'intentionally' does not, grammatically or phraseologically, modify the noun 'crime' but the participial phrase 'committing an act'. To construe the statute otherwise would raise ignorance of the law to the level of a complete defense, and would also mean that deliberate acts not intended to have criminal consequences would carry with them no criminal responsibility.
>
> "Moreover, the question of intent is one of form; the statute requires only that the criminal charge made by the demanding state implicate the accused in an intentional act."

On appeal, the Michigan Supreme Court interpreted the statutory language to require that the accused specifically intend that a crime occur, App. 5a, 7a:

"We hold that the non-fugitive extradition provision of the Uniform Criminal Extradition Act requires the accused to have committed an act in the asylum state coupled with an intent that such act result in a crime in the demanding state.

"• • •

"• • • But a crime based on negligence can never meet the requirement of this statute."

Statement of Facts

The facts relating to the motor vehicle accident as stated in the report of the National Transportation Safety Board are as follows (App. 66a):

"On February 18, 1981, a tractor-semitrailer loaded with building supplies was traveling eastbound on US Route 40, a two lane mountain highway approaching Frostburg, Maryland. The combination vehicle apparently lost braking control and passed and sideswiped a pickup truck as it descended the steep three-mile grade. It continued eastbound and entered the city limits of Frostburg at a high rate of speed striking eight vehicles and pushing these vehicles into six additional vehicles. The combination vehicle continued eastbound through the crowded downtown business district and finally veered to the right into a three story commercial building after several consecutive vehicular impacts.

"The force of impact drove the tractor and a previously struck vehicle inside the building causing the floor and right front corner to collapse. An explosion and fire erupted immediately. Three persons were fatally injured and twelve other vehicle occupants sustained injuries of varying degrees. No pedestrians were reported injured."

The tractor and trailer were both owned by Respondent Deur, were leased to Direct Transit Lines, Inc. of Grand Rapids, Michigan and were driven by Robert Keyser, an employee of Direct Transit Lines, Inc. The lease required Respondent Deur to maintain the equipment—including the brakes—in good condition as to mechanical repair and in full complaince "with the rules and requirements of all applicable regulatory authorities and all laws . . . ." (paragraphs 7, 3; App. 72a, 74a). The National Transportation Safety Board's report included, *inter alia,* a detailed examination of the brakes of the tractor and trailer and numerous discrepancies were noted. App. 61a. Additionally, the report noted that an April 11, 1978 safety compliance survey conducted on Direct Transit Lines, Inc. revealed 46 violations of the Federal Motor Carriers Safety Regulations including failing to maintain or falsification of drivers' daily logs and failing to keep proper inspection and maintenance records. App. 64a. A subsequent inspection on February 27, 1981 revealed 127 violations including failure to maintain or falsification of drivers' daily logs and motor vehicle equipment. App. 64a.

A report by Captain B. E. Diehl, Commander, Automotive Safety Enforcement Division, Maryland State Police, concluded that the trailer had brake, tire and suspension defects, some of which contributed to the collision and further concluded that, ". . . the brakes on the tractor would not meet Maryland safety standards and were contributory to the collision." App. 70a.

Trooper Donald C. Maiers of the Maryland State Police investigated the accident. In the course of his investigation he visited Grand Rapids, Michigan and interviewed numerous witnesses regarding maintenance of the vehicles involved in the Maryland accident as well as other vehicles leased to Direct Transit Lines, Inc. by Respondent Deur. Summaries of those interviews are included in Trooper Maiers' affidavit, App. 52a,

and as a result of his investigation, Trooper Maiers concluded, App. 55a:

> "Your Affiant believes, based on his personal observations, interviews conducted, and information received, Marvin Robert Deur had *intentionally and knowingly* adopted and enforced a policy of poor maintenance of the vehicle leased to Direct Transit, Inc. and other vehicles similarly leased. These activities of Deur directly contributed to the incident which resulted in the deaths of three persons in Frostburg, Maryland, on February 18, 1981." (Emphasis added.)

Respondent Deur was subsequently indicted by a Maryland grand jury and charged with three counts of manslaughter by motor vehicle, Maryland Code Annotated, Art. 27, § 388.

REASONS FOR GRANTING THE WRIT

I

CERTIORARI SHOULD BE GRANTED BECAUSE INTERPRETATION OF THE UNIFORM CRIMINAL EXTRADITION ACT PRESENTS AN IMPORTANT QUESTION OF FEDERAL LAW WHICH HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT.

Although Respondent Deur asserted in his complaint (App. 42a) that permitting his extradition would violate the Fourth, Fifth, and Fourteenth Amendments of the Constitution of the United States, the Michigan courts never explicitly ruled on these claims. Extradition cases typically involve the Extradition Clause, US Const, art 4, § 2, cl 2, but decisions of this Court indicate that the Extradition Clause only applies to fugitive extraditions. See *Hyatt* v *New York*, 188 US 691

(1902), *Appleyard* v *Massachusetts,* 203 US 222 (1906), and *Innes* v *Tobin,* 240 US 127 (1915). This Court has said, however, that the policies underlying interstate extradition involve other constitutional principles such as the concepts of comity and full faith and credit found in US Const, art 4, § 1, and has recognized that Congressional power to legislate in this area is derived not only from the Extradition Clause but also from the Commerce Clause, US Const, art 1, § 8, cl 3. See *Michigan* v *Doran,* 439 US 282, 287-288 (1978) and *Cuyler* v *Adams,* 449 US 433, 442, fn 10 (1981).

In addition to these constitutional bases, Petitioners submit that the UCEA, as applied in this case, is a federal statute since it falls within the Compact Clause, US Const, art 1, § 10, cl 3, which provides, in pertinent part, that "No State shall, without the Consent of the Congress, . . . enter into any Agreement or Compact with another State . . . ." Because this nonfugitive extradition case involves claims under both the Constitution and a federal statute, this Court has certiorari jurisdiction under 28 USC § 1257(3).

The Compact Clause does not apply to every example of reciprocal legislation or interstate agreement. See *United States Steel Corp* v *Multi-State Tax Commission,* 434 US 452 (1978). It only applies to those agreements whose subject matter "is an appropriate subject for congressional legislation." *Cuyler* v *Adams, supra,* 449 US at 440. Where the Compact Clause applies, however, Congressional consent is required. The construction of an interstate agreement sanctioned by Congress under the Compact Clause presents a federal question over which this Court has certiorari jurisdiction. See *West Virginia, ex rel Dyer* v *Sims,* 341 US 22 (1951) and *Cuyler* v *Adams, supra,* 449 US at 440:

> ". . . where Congress has authorized the States to enter into a cooperative agreement, and where the subject

> matter of that agreement is an appropriate subject for congressional legislation, the consent of Congress transforms the States' agreement into federal law under the Compact Clause." (Footnote omitted.)

Petitioners submit that the subject matter of the Uniform Criminal Extradition Act—the interstate rendition of persons accused of crime—is an appropriate subject for Congressional legislation and is thus within the Compact Clause. Petitioners further submit that Congress has given its consent to the UCEA in the Crime Control Consent Act of 1934, 4 USC § 112(a), quoted at page 2 of this petition.

In *Cuyler* v *Adams, supra,* 449 US 433, this Court discussed the interplay between the Uniform Criminal Extradition Act and the Interstate Agreement on Detainers which both deal with the interstate rendition of persons for disposition of outstanding criminal charges. This Court specifically held that it had jurisdiction to interpret the Detainer Agreement as a federal law under the Compact Clause since the subject matter was appropriate for Congressional legislation and Congress had given its consent in the Crime Control Consent Act of 1934. Petitioners submit that an identical situation exists with respect to the Uniform Criminal Extradition Act in the instant case.

It cannot seriously be doubted that the subject matter of the UCEA—interstate extradition—is appropriate for Congressional legislation. As indicated in *Cuyler, supra,* 449 US at 442, fn 10, Congress has in fact legislated in the extradition area since 1793 and has explicitly recognized that it has additional power to do so as shown by the House and Senate reports which accompanied the Crime Control Consent Act of 1934, see HR Rep No. 1137, 73rd Congress, 2d Session, 1-2 (1934):

> "This bill proposes to give the consent of Congress to any two or more States to enter into agreements or compacts

for cooperative effort and mutual assistance in the prevention and punishment of crime, and to establish whatever joint agencies may seem desirable to them to make effective such agreements and compacts.

" • • •

"The rapidity with which persons may move from one State to another, those charged with crime and those who are necessary witnesses in criminal proceedings, and the fact that there are no barriers between the States obstructing this movement, makes it *necessary that one of two things shall be done, either that the criminal jurisdiction of the federal government shall be greatly extended or that the States by mutual agreement shall aid each other* in the detection and punishment of offenders against their respective criminal laws.

"Since this is a matter of mutual importance and mutual interest, and subject to the control of the States, each of which is confronted with the same necessity, it seems absurd that the present handicap which they impose on each other should be continued. This bill seeks to remove the obstruction imposed by the federal constitution [under the Compact Clause] and allow the States cooperatively and by mutual agreement to work out their problems of law enforcement.

"Clearly the Federal Government cannot assume this jurisdiction and take over this responsibility. Its organization makes it utterly unfitted for the purpose. The States have an adequate constabulary, the federal government a very limited constabulary which could be used for the purpose of enforcing any *federal laws governing new federal offenses under the interstate commerce clause.*" (Emphasis added.)

It is apparent that although Congress recognized that it had the power to regulate in the area of interstate cooperation regarding the detection and punishment of crime, it chose not to do so because of the impracticality of enforcement by the federal government. Instead, Congress chose to give its consent to precisely the type of interstate agreement embodied in the Interstate Agreement on Detainers and the Uniform Criminal Extradition Act.

It is immaterial that existing federal legislation deals only with fugitives and the instant case involves a non-fugitive since the jurisdictional question under the Compact Clause must be decided upon the UCEA as a whole rather than upon independent examination of each separate subsection. The validity and construction of the non-fugitive provision of the UCEA presents merely a question of interpretation, not jurisdiction. Severing the non-fugitive provision from the remainder of the UCEA would emasculate the comprehensiveness and the effectiveness of the UCEA. The policies underlying the extradition of non-fugitives are at least as important as the policies underlying the extradition of fugitives, as recognized by the Council of State Governments in *The Handbook on Interstate Crime Control* (Revised Edition, 1955, pp 11, 38-39):

> "The importance of this provision [section 6, relating to the extradition of non-fugitives] is easily understood, when thought is given to the vast conspiracies by organized criminals, which may, and often do, involve operations across the borders of several states. Unless the demanding state—the one in which the criminal injury occurs—can have the cooperation of other states in securing the accused person for trial, he is largely immune from prosecution and punishment. • • •

> " * * * Upon whatever theory section 6 has been upheld, its presence in the uniform extradition act is probably a major reason for the general adoption of the law."

The policies underlying non-fugitive extradition have also received judicial recognition, *In Re Cooper*, 53 Cal 2d 772, 776; 349 P2d 956, 958 (1960), *cert den and appeal dismissed* 364 US 294 (1960):

> "Modern communication and transportation facilitate the commission of crimes across state lines. A criminal who acts in one state to commit crimes in another may pose a far more serious problem to the latter state than one who commits a crime there and then flees from justice. When the criminal who commits his crime entirely in one state flees, he ordinarily poses no threat of additional crimes therein; if extradition fails, there is only frustration of that state's interest in punishing him. *In contrast, the criminal who operates from without the state's borders poses a continuing threat. Since his conduct may be undetected or apparently harmless in the state where he acts, the only effective impetus for prosecution may come from the state that suffers the harm.* Far more divisive than a state's refusal to extradite a fugitive for a past offense would be its unwitting provision not only of a base of operation but of an asylum for those who commit crimes without being personally present at the place where their crimes are consummated." (Emphasis added.)

In summary, Petitioners submit that for purposes of the Compact Clause, the Uniform Criminal Extradition Act is indistinguishable from the Interstate Agreement on Detainers as discussed in *Cuyler* v *Adams, supra.* The Uniform Criminal Extradition Act is therefore a federal law and this Court has certiorari jurisdiction under 28 USC § 1257(3) to interpret the UCEA and it is not bound by the interpretation of the Michigan Supreme Court.

II

CERTIORARI SHOULD BE GRANTED BECAUSE THE MICHIGAN SUPREME COURT'S ERRONEOUS INTERPRETATION OF THE NON-FUGITIVE PROVISION OF THE UNIFORM CRIMINAL EXTRADITION ACT IS IN CONFLICT WITH THE INTERPRETATION GIVEN BY OTHER STATE COURTS OF LAST RESORT.

The Uniform Criminal Extradition Act was prepared by the National Conference of Commissioners on Uniform State Laws in 1926. It has been enacted in 48 states and although there are minor variations in some states, the language of the non-fugitive provision in most states is identical to that in the Michigan statute, which permits extradition of persons in the asylum state charged in the demanding state "with committing an act in [the asylum state] intentionally resulting in a crime" in the demanding state. MCLA 780.3a.

Because of its nationwide acceptance, uniformity of interpretation is essential to effective operation of the UCEA. As enacted in Michigan, the title of the act (App. 30a) recognizes that it is "an act relative to and to make uniform the procedure on interstate extradition . . . .", and § 28 (MCLA 780.28) explicitly acknowledges:

> "The provisions of this act shall be so interpreted and construed as to effectuate its general purposes to make uniform the law of those states which enact it."

The Michigan Supreme Court interpreted the statutory language very narrowly, declaring that non-fugitive extradition is only possible when an accused has the specific intent that a crime occur, App. 5a, 7a. No other court which has interpreted this statutory language has applied such a limiting interpretation.

Throughout the country, non-fugitive extraditions have consistently been upheld in many cases where the accused did not specifically intend the commission of a crime. See 11 Uniform Laws Annotated, "Criminal Law and Procedure" pp 166 *et seq* (1974). For example, in *Conrad* v *McClearn*, 166 Colo 568, 445 P2d 222 (1968), the plaintiff was arrested in Colorado on a California extradition request charging non-support. Plaintiff alleged, *inter alia*, that he was financially unable to make support payments and therefore did not have any intent as required by the statute. The court rejected his claim that extradition should be denied, 445 P2d at 224:

> "Petitioner argues further that he can be extradited only after a finding by the trial court that he committed an intentional act that resulted in a crime in California. To rebut the allegation of intent in the warrant, he offered evidence that he was financially unable to make the support payments. We do not construe the statute to require that the trial court find that the accused committed an intentional act. Rather *the question of intent is relevant only to the sufficiency of the demand for extradition. It is not an element to be proved in the responding state.* Instead, it is jurisdictional fact which must appear from the face of the supporting documents. [Citation omitted]. Accordingly, the basis for extradition in the instant case is that Conrad has been charged in California in the manner provided in [the statute] with committing an act in this state, or in a third state, intentionally resulting in a crime in California. [Statutory citation ommitted]. The trial court was therefore under no duty to admit the evidence offered to prove that Conrad was financially unable to make the support payments." (Emphasis added.)

Similarly, in *McCullough* v *Darr*, 219 Kan 477, 548 P2d 1245 (1976), Colorado submitted an extradition request to Kansas

for the return of plaintiff who was charged with violation of Colorado state court child custody orders. The trial court granted habeas corpus relief, but the Kansas Supreme Court reversed, saying, *inter alia*, 548 P2d at 1250:

> "The appellee next contends there was never any criminal intent on his part either in Kansas or Colorado. *Because this court does not determine the guilt or innocence of the accused, we are not required under [the non-fugitive provision of the statute] to find the accused intentionally committed the crime. Rather the question of intent is to be determined from the sufficiency of the request for extradition.* [Citing *Conrad* v *McClearn, supra*]. Since the affidavit for requisition and the amended information charged the accused with the intent to deprive the lawful custodian of the children, sufficient intent to commit the crime is alleged." (Emphasis added.)

In *Newman* v *Elrod*, 72 Ill App 3d 616, 391 NE2d 37 (1979), *cert den* 445 US 942 (1980), the plaintiff was charged in New Jersey with conspiracy to violate the laws regarding private placement of children for adoption. Plaintiff claimed, *inter alia*, that the non-fugitive provision of the Uniform Criminal Extradition Act requires that he intend his conduct to result in a crime, but the court rejected that interpretation, 391 NE2d at 41:

> "We further reject plaintiff's suggestion that the trial court erred in refusing to consider whether plaintiff's conduct was intended to result in a crime elsewhere. Such consideration would be improper under section 3 of the act (see *Michigan* v *Doran*, (1978), 439 US 282, 99 S Ct 530, 58 L Ed 2d 521), and similar arguments have been persuasively rejected in other jurisdictions under provisions comparable to section 6 of the act [citing *Conrad* v *McClearn, supra*, and *McCollough* v *Darr, supra*]."

Unlike the decision of the Michigan Supreme Court in the instant case, the opinions of the foregoing courts of last resort in other states are consistent with the traditional principles of limited review of extradition matters by the courts of the asylum state. The principle that extradition is properly viewed as a summary executive proceeding has been stated in many cases, including *Biddinger* v *Commissioner of Police*, 245 US 128, 132-133 (1917), and *Michigan* v *Doran*, 439 US 282 (1978). In *Doran*, a fugitive extradition, the Michigan Supreme Court asserted that courts in an asylum state had authority to inquire into the factual basis of a demanding state's determination of probable cause and, if dissatisfied with the demanding state's decision, had authority to nullify an executive grant of extradition. This Court reversed, referring, *inter alia*, to the "traditional presumption of regularity" which is accorded to proceedings in the demanding state, 439 US at 290, and also said:

> "Interstate extradition was intended to be a summary and mandatory executive proceeding derived from the language of article IV, section 2, cl 2, of the constitution. [Citations omitted]. The Clause never contemplated that the asylum state was to conduct the kind of preliminary inquiry traditionally intervening between the initial arrest and trial.
>
> "• • •
>
> "Whatever the scope of discretion vested in the governor of an asylum state, [Citation omitted], the courts of an asylum state are bound by article IV, section 2, [Citation omitted], by [28 USC] section 3182, and, where adopted, by the uniform criminal extradition act. A governor's grant of extradition is prima facie evidence that the constitutional and statutory requirements have been met. [Citation omitted]. Once the governor has granted extra-

> dition, a court considering release on habeas corpus can do no more than decide (a) whether the extradition documents on their face are in order; (b) whether the petitioner has been charged with a crime in the demanding state; (c) whether the petitioner is the person named in the request for extradition; and (d) whether the petitioner is a fugitive. These are historic facts readily verifiable." 439 US at 288-289.

Although both *Biddinger, supra,* and *Doran, supra,* involve fugitive extraditions, Petitioners submit that the same principles apply to non-fugitive extraditions. See the statements by the Council of State Governments in the Handbook on Interstate Crime Control, p 11, and *In Re Cooper, supra,* 53 Cal 2d at 776, both quoted at pages 14-15 of this brief. Several state courts have specifically applied *Michigan* v *Doran, supra,* to non-fugitive extraditions. See *In Re Mahler,* 177 NJ Super 337, 426 A2d 1021 (1981), *cert den* 87 NJ 349, 434 A2d 93 (1981) and *Hill* v *Blake,* 186 Conn 404, 441 A2d 841 (1982).

In this non-fugitive extradition proceeding, the question of fugitivity is inapplicable and the inquiry "whether the petitioner has been charged with a crime in the demanding state" must be undertaken in light of the statutory language which requires that the accused be charged in the demanding state "with committing an act in [the asylum state] . . . intentionally resulting in a crime" in the demanding state. It was in this inquiry that the Michigan Supreme Court went wrong, since its interpretation of the statute requires the courts of an asylum to go far beyond mere review of "historic facts readily verifiable." *Michigan* v *Doran, supra,* 439 US at 289.

The Michigan Supreme Court's interpretation of the non-fugitive provision would require the courts of an asylum state to interpret the laws of the demanding state to determine what mental element was included in the offense charged. After

determining what the demanding state's law required, the courts in the asylum state would then have to make a factual determination of what mental state the accused in fact possessed. Only after these two detailed inquiries had been completed could the courts of the asylum state determine whether the non-fugitive provisions of the UCEA, as interpreted by the Michigan Supreme Court in the instant case, had been satisfied. Thus, non-fugitive extraditions in Michigan would no longer be summary executive proceedings, but would instead be extended into detailed evidentiary proceedings, probably requiring the active participation in the asylum state of prosecution officials from the demanding state.

This incorrect and burdensome interpretation by the Michigan Supreme Court might have another detrimental effect. Because prosecuting officials in demanding states know that they would be precluded from obtaining custody of the accused unless a specific intent crime was alleged, there would be considerable pressure to issue the most severe possible charge, even when a range of lesser charges would otherwise be available. This is not to suggest that any prosecution official would deliberately make a charge knowing that it could not be substantiated, but only to point out that whenever options exist, prosecutors would virtually be compelled to resolve all doubts in favor of more serious charges because otherwise they would be unable to obtain the accused for any trial whatsoever.

The authorities upon which the Michigan Supreme Court relied do not support its conclusion. *Strassheim* v *Daily*, 221 US 280 (1911), was a fugitive extradition which involved charges of bribery and obtaining money by false pretenses and so this Court simply did not examine the question whether a non-fugitive extradition would have been proper for an offense which did not include an element of intent. Similarly, the Michigan Supreme Court was in error when it concluded (App. 7a) that the use of "homicide" as an example in the

Report of the Committee on a Uniform Act for the Extradition of Persons Charged with Crime demonstrated that only intentional crimes were intended to be covered by non-fugitive extradition. Indeed, use of the word "homicide" rather than "murder" implies that reckless or negligent offenses, such as that charged in the instant case, are within the scope of the Act.

During the proceedings in the lower Michigan courts, Respondent Deur alleged that certain technical defects in the extradition documents rendered the extradition void. These challenges were not vigorously pursued in the Michigan Supreme Court and that court did not address them, but in any event, Petitioners submit that they are immaterial and have no effect on the validity of the extradition. While it is true that there are some minor inconsistencies in the wording of the various extradition documents and supporting papers, Petitioners submit that all of the charging documents when taken together contain no substantive defects, that Respondent Deur was not misled by any technical defects in the documents, and that Respondent Deur was "substantially charged" in accordance with the statute. MCLA 780.3. Numerous courts have rejected challenges to technical defects in extradition documents and have relied on the general principles of interpretation that protect an accused's substantive rights while recognizing that courts in asylum states have very limited powers of review, that extradition statutes are to be liberally construed and that documents supporting an extradition must be viewed in their entirety. See *Greenbaum* v *Darr*, 220 Kan 525, 552 P2d 993 (1976); *People* v *Sain*, 29 Ill 2d 239, 193 NE2d 767 (1963); *Furman* v *Miller*, 598 P2d 1042 (Colo, 1979); *Hill* v *Blake, supra*, 186 Conn 404; *Florida* v *Soto*, 423 S2d 362 (Fla, 1982).

RELIEF SOUGHT

WHEREFORE, for the foregoing reasons, a writ of certiorari should issue to review the judgment and opinion of the Michigan Supreme Court.

Respectfully submitted,

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Dated March 25, 1985

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MICHIGAN SUPREME COURT OPINION

2/March 1984

STATE OF MICHIGAN

SUPREME COURT

FILED DEC 28 1984
Released January 17, 1985

MARVIN ROBERT DEUR, Plaintiff-Appellant, v SHERIFF OF THE COUNTY OF NEWAYGO, STATE OF MICHIGAN, PROSECUTING ATTORNEY FOR THE COUNTY OF NEWAYGO, STATE OF MICHIGAN, STATE OF MARYLAND, Defendants-Appellees.	No. 71785

BEFORE THE ENTIRE BENCH
KAVANAGH, J.

This case concerns the construction of the non-fugitive extradition statute, being MCL 780.3a; MSA 28.1285(3½) of the Uniform Criminal Extradition Act. MCL 780.1 *et seq*; MSA 28.1285(1) *et seq*.

Plaintiff was arrested on a warrant issued by the Governor of Michigan on a request for extradition by the Governor of Maryland. The Maryland Governor's request was based upon plaintiff's indictment by a Maryland grand jury for the crime of manslaughter by motor vehicle, Art 27, § 388 Maryland Compiled Laws, a misdemeanor carrying a three-year maximum penalty.

The charge arose out of an accident in Frostburg, Maryland, involving a tractor-trailer rig owned by plaintiff. The accident was described in the report of the National Transportation Safety Board:

> "On February 18, 1981, a tractor-semitrailer loaded with building supplies was traveling eastbound on US Route 40, a two lane mountain highway approaching Frostburg, Maryland. The combination vehicle apparently lost braking control and passed and sideswiped a pickup truck as it descended the steep three-mile grade. It continued eastbound and entered the city limits of Frostburg at a high rate of speed striking eight vehicles and pushing these vehicles into six additional vehicles. The combination vehicle continued eastbound through the crowded downtown business and finally veered to the right into a three story commercial building after several consecutive vehicular impacts.
>
> "The force of impact drove the tractor and a previously struck vehicle inside the building causing the floor and right front corner to collapse. An explosion and fire erupted immediately. Three persons were fatally injured and twelve other vehicle occupants sustained injuries of varying degrees. No pedestrians were reported injured."

The rig was leased to Direct Transit Lines, Inc., and was being operated by one of Direct's employees at the time of the accident.

Under the terms of the lease, plaintiff was responsible for maintaining the vehicle and the Maryland indictment was based on the assertion the plaintiff had "intentionally and knowingly" adopted and enforced a policy of poor maintenance which contributed to the accident.

The prosecuting authorities claim this brought him in violation of the statute which reads as follows:

> "Every person causing the death of another as the result of the driving, operation or control of an automobile, motor vehicle, motor boat, locomotive, engine, car, street car, train or other vehicle in a grossly negligent manner, shall be guilty of a misdemeanor to be known as 'manslaughter by automobile, motor vehicle, motor boat, locomotive, engine, car, street car, train or other vehicle,' and the person so convicted shall be sentenced to jail or in the house of correction for not more than three years, or be fined not more than $1,000.00 or be both fined and imprisoned." MD Code, art 27, § 388.

Inasmuch as it is not claimed that plaintiff's acts were performed in Maryland, in effect Maryland charges that plaintiff's "grossly negligent" acts in Michigan caused the deaths in Maryland in violation of the statute.

The statute under which the warrant was issued provides:

> "Sec. 3a. The governor of this state may also surrender on demand of the executive authority of any other state, any person in this state charged in such other state in the manner provided in section 3 with committing an act in this state, or in a third state, intentionally resulting in a crime in the state whose executive authority is making the demand, and the provisions of this act not otherwise inconsistent shall apply to such cases, even though the accused was not in that state at the time of the commission of the crime, and has not fled therefrom, and the requirements contained in subdivision (d) and (e) of section 3 of this act shall not apply to such cases." MCL 7803a; MSA 28.1285(3½).

The Newaygo Circuit Court granted plaintiff's petition for habeas corpus, finding that the charging papers did not have the effect of charging the plaintiff with having committed an act in Michigan intentionally resulting in the crime with which he is charged in Maryland as required by the statute.

The Court of Appeals reversed, *Deur* v *Newaygo County Sheriff*, 125 Mich App 642; 336 NW2d 852 (1983), holding that under the statute there need not be an intention that a crime result in the demanding state, but rather only that the act committed in the asylum state be intentional and subsequently result in a crime in the demanding state. In arriving at this conclusion, the Court of Appeals stated:

> "The crucial language, therefore, is that portion of § 3a which requires that the accused be charged with 'committing an act in this state • • • intentionally resulting in a crime in the state whose executive authority is making the demand.' The adverb 'intentionally' does not, grammatically or phraseologically, modify the noun 'crime' but the participial phrase 'committing an act.' To construe the statute otherwise would raise ignorance of the law to the level of a complete defense, and would also mean that deliberate acts not intended to have criminal consequences would carry with them no criminal responsibility." *Id.*, p 647.

We do not agree with the Court of Appeals interpretation of MCL 780.3a; MSA 28.1285(3½). We cannot accept the grammatical construction used to find the word "intentionally" modifying the phrase "committing an act." A general rule of statutory construction is that "[w]ords or phrases shall be read in context and construed according to the rule of grammar and common usage." Uniform Statutory Construction Act, 1965, § 2; McCaffrey, Statutory Construction, § 21; Crawford, Construction of Statutes, § 196; 2A Sands, Sutherland Statutory

Construction (4th ed), § 47.01, text and commentary. The rules of grammar and common usage would require the adverb "intentionally" to modify the word or phrase it precedes and not the word or phrase that comes before it. Follett, Modern American Usage, (New York: Hill and Wang, 1966), p 54; Fowler, Modern English Usage, (New York: Oxford University Press, 1965), position of adverbs, p 462. If "intentionally" was intended to modify the phrase "committing an act" the statute should have read "any person in this state charged in such other state in the manner provided in section 3 with [intentionally] committing an act in this state, or in a third state, resulting in a crime in the state whose executive authority is making the demand * * *."

We hold that the non-fugitive extradition provision of the Uniform Criminal Extradition Act requires the accused to have committed an act in the asylum state coupled with an intent that such act result in a crime in the demanding state.

This requirement is consonant with the general rule that no state or nation can, by its laws, directly affect, bind or operate upon property or persons beyond its territorial jurisdiction, *Sexton* v *Ryder Truck Rental, Inc,* 413 Mich 406; 320 NW2d 843 (1982), citing 73 Am Jur 2d, Statutes, §359, p 492. While *Sexton* dealt with a civil tort action, we applied the same rule in *People* v *Devine,* 185 Mich 50, 151 NW 646 (1915), where the accused was charged with polygamy.

Maryland, through the use of the non-fugitive extradition provision of the Uniform Extradition Act, here seeks to give extraterritorial effect to a penal statute seeking to regulate unintentional conduct. This issue was covered by Justice Holmes in *Strassheim* v *Daily,* 221 US 280; 31 S Ct 558; 55 L Ed 735 (1911). In *Strassheim,* the accused had been indicted in Michigan for bribery and also for obtaining money from the state by false pretenses. The accused, Daily, did not

act in Michigan relating to the charged crimes. In reversing an order on habeas corpus discharging Daily, Justice Holmes, writing for the Court, stated, pp 284-285:

> "If a jury should believe the evidence and find that Daily did the acts that led Armstrong to betray his trust, deceive the Board of Control, and induce by fraud the payment by the State, the usage of the civilized world would warrant Michigan in punishing him although he never had set foot in the state until *after* the fraud was complete. *Acts done outside a jurisdiction, but intended to produce and producing detrimental effects within it, justify a state in punishing the cause of the harm as if he had been present at the effect, if the state should succeed in getting him within its power.*" (Emphasis added.)

In effect, in *Strassheim*, Michigan was allowed to apply its penal laws extraterritorially because, while not being present in Michigan, the accused was found to have committed acts outside of Michigan intending them to have a detrimental effect in Michigan.

Strassheim was decided in 1911. The Uniform Criminal Extradition Act was drafted in 1926. The language used by Justice Holmes in *Strassheim* and the language used in the nonfugitive extradition provision of the Uniform Criminal Extradition Act are similar. The timing and similarity in language convince us of the intent by the Uniform Act drafters to adopt the *Strassheim* reasoning. The Report of the Committee on a Uniform Act for the Extradition of Persons Charged with Crime, Handbook of the National Conference of Commissioners on Uniform State Laws and Proceedings (1926), pp 585, 587, we think implicitly acknowledged an intent requirement for non-fugitive extradition. The committee, in explaining the inclusion of § 6 on non-fugitive extradition, stated:

> "On the same theory [comity] we have included a provision as section 6 of this draft, authorizing the extradition of persons who may have never fled from justice at all, but who have committed homicide across the border of a state by shooting or other means coming within the common judicial conclusion that the crime is committed at the place where the person is killed."

The use of homicide in explaining the non-fugitive extradition provision we are persuaded indicated that the committee envisioned non-fugitive exradition only for intentional crimes. This would be consistent with the language and reasoning of *Strassheim.*

The Michigan Legislature adopted the Uniform Criminal Extradition Act in 1937. The pertinent language of § 6 of the act was adopted without change and appears in MCL 780.3a; MSA 28.1285(3½). Thus, our statute pertaining to non-fugitive extradition, MCL 780.3a; MSA 28.1285(3½), we are satisfied, requires an accused to have intended that an act in the asylum state result in a crime in the demanding state.

The Court of Appeals stated that to require an intention that a crime result would allow deliberate acts to carry no criminal responsibility. We disagree. Intent can be inferred from a defendant's deliberate acts. But a crime based on negligence can never meet the requirement of this statute.

In addition to the grammatical reading of the statutory language and the legislative history indicating an intent to include a requirement that the accused intend that a crime result in the demanding state, there are other reasons for such a requirement. First, the accused has the right under our system of criminal justice to know what acts are proscribed and what conduct on his part shall subject him to criminal jeopardy. Also, the asylum state has a legitimate interest in

exposing and learning of those acts taking place within its jurisdiction with the intent that a crime be committed in a sister state.

While we have held that the asylum state has no power to inquire into the guilt or innocence of the person whose extradition is demanded, *In re Doran*, 401 Mich 235; 258 NW2d 406 (1977), reversed on other grounds, 439 US 282 (1978), there is an obligation to make certain that the requirement that the extradition statute be satisfied before permitting one to be surrendered to the executive authority of another state. In this case, it is apparent from the facts that Mr. Deur did not commit any act in the State of Michigan intentionally resulting in the crime with which he is charged in the State of Maryland. The requirements for a valid extradition under that statute not having been met, we vacate the Court of Appeals order discharging the writ of habeas corpus. The writ is reinstated.

Thomas Giles Kavanagh /s/
Charles L. Levin /s/
G. Mennen Williams /s/
Michael F. Cavanagh /s/

2/March 1984

STATE OF MICHIGAN

SUPREME COURT

MARVIN ROBERT DEUR, Plaintiff-Appellant, v SHERIFF OF THE COUNTY OF NEWAYGO, STATE OF MICHIGAN, PROSECUTING ATTORNEY FOR THE COUNTY OF NEWAYGO, STATE OF MICHIGAN, STATE OF MARYLAND. Defendants-Appellees.	No. 71785

BRICKLEY, J. (*concurring*).

I fully agree with Justice Kavanagh's conclusion that MCL 780.3a; MSA 28.1285(3½) requires that the act committed by the accused in the asylum state must have been done with the intent that the crime result in the requesting state.

In the case at bar, the Maryland request for extradition is based largely on the affidavit of Maryland Police Officer Donald Maiers. Officer Maiers concluded his affidavit as follows:

> "Your affiant believes, based on his personal observations, interviews conducted, and information received, [that] Marvin Robert Deur had intentionally and knowingly adopted and enforced a policy of poor maintenance of the vehicle leased to Direct Transit, Inc., and other vehicles similarly leased. These activities of Deur directly contributed to the incident which resulted in the death

of three persons in Frostburg, Maryland, on February 18, 1981."

Notwithstanding these broad allegations, there is nothing in the affidavit or any other of the requesting papers which indicates that plaintiff committed an act in Michigan which he intended to result in a crime in Maryland. Regardless of plaintiff's allegedly poor maintenance practices in Michigan, the extradition request and accompanying documents do nothing to esttablish that these practices were carried out with the intent that a crime result in Maryland. The question is not whether plaintiff intentionally used poor maintenance in Michigan, but whether he intended his actions to result in a crime in Maryland.

Thus, absent adequate allegations in the extradition papers,[1] plaintiff is entitled to habeas corpus relief.

Even though the extradition request is currently invalid, I cannot agree with my brother's conclusion that "it is apparent from the facts that Mr. Deur did not commit any act in the State of Michigan intentionally resuling in the crime with which he is charged in the State of Maryland." Because the

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[1]

We note that the extradition requests from the Governor of Maryland stated

> "that Marvin Robert Deur under the Laws of this State stands charged with the crime of manslaughter by motor vehicle which I certify to be a crime under the Laws of this State, by intentionally committing an act in the State of Michigan resulting in said crime in this State."

On the other hand, Lawrence V. Kelly, State Attorney for Allegheny County, Maryland, in his application for requisition addressed to his governor alleged that the plaintiff

> "committed an act or acts on or about the 1st day of May, 1980, thru [*sic*] the 18th day of February, 1981, in the State of Michigan which intentionally resulted in commission of said crime in the said County of this State."

extradition request is facially invalid I would avoid any inquiry whether Deur actually committed acts in Michigan which were intended to result in a crime in Maryland. Such an inquiry in this case inevitably results in an examination of the evidence unnecessary to our holding at this time.

I further note that it is unnecessary to address plaintiff's argument that the rule announced in *In the Matter of Doran,* 401 Mich 235; 258 NW2d 406 (1977), reversed in *Michigan* v *Doran,* 439 US 282; 99 S Ct 530; 58 L Ed 2d 521 (1978), is still viable in Michigan in non-fugitive extradition cases. This court in *Doran* based its conclusion on constitutional principles, and it is well settled that this Court will decline to answer federal constitutional issues if state statutory relief is available.

I would hold that the extradition papers are inadequate under MCL 780.3a; MSA 28.1285(3½) and save all other questions for another day.

James H. Brickley /s/

2/March 1984

STATE OF MICHIGAN

SUPREME COURT

MARVIN ROBERT DEUR, Plaintiff-Appellant, v SHERIFF OF THE COUNTY OF NAWAYGO, STATE OF MICHIGAN, PROSECUTING ATTORNEY FOR THE COUNTY OF NEWAYGO, STATE OF MICHIGAN, STATE OF MARYLAND. Defendants-Appellees.	No. 71785

BEFORE THE ENTIRE BENCH

RYAN, J. (*dissenting*).

My examination of the extradition documents satisfies me that the requisite jurisdictional fact in question, that the plaintiff is alleged to have performed acts in Michigan "intentionally resulting in a crime" in Maryland, is adequately alleged. That allegation appears explicitly in the Maryland state's attorney's application for requisition and in the Michigan Governor's warrant. The absence of that explicit assertion in the Maryland Governor's extradition request, and in the affidavit of the Maryland state police officer, is not, in light of the foregoing, jurisdictionally fatal to the Michigan Governor's unreviewable discretionary decision to order the plaintiff's extradition.

James L. Ryan /s/

Patricia J. Boyle /s/

MICHIGAN COURT OF APPEALS OPINION

[125 MICH APP 642]

DEUR v NEWAYGO COUNTY SHERIFF

• • •

[125 MICH APP 643]

Before: D. E. Holbrook, Jr., P.J., and D. F. Walsh and J. C. Kingsley,* JJ.

Per Curiam. Defendants appeal by right a February 24, 1982, order of the Newaygo County Circuit Court ordering plaintiff's release from confinement pursuant to plainitff's complaint for a writ of habeas corpus.

By warrant of the Honorable William G. Milliken, Governor of the State of Michigan, dated Septembr 21, 1981, in response to the request dated June 19, 1981, by the Governor of the State of Maryland, defendant's extradition to that state on a charge of manslaughter by motor vehicle was authorized. The extradition falls within the confines of MCL 780.3a; MSA 28.1285(3-1/2), § 3a of the Uniform Criminal Extradition Act, which [125 MICH APP 644] deals with the extradition of non-fugitives. Although plaintiff was never in the State of Maryland at any relevant time, he is charged with criminal responsibility for the deaths of three persons in a motor vehicle accident.

Plaintiff is the owner of a tractor-trailer rig which he had leased to a company known as Direct Transit Lines, Inc. The tractor is licensed to operate, *inter alia*, in the State of Maryland, the the license being issued in plaintiff's name. The lease agreement specifically obligates plaintiff to maintain the vehicle in safe and proper working condition.

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* Circuit judge, sitting on the Court of Appeals by assignment.

Accompanying the extradition request are numerous documents, including a study of the accident in question by the National Transportation Safety Board and supporting affidavits by investigating law enforcement officers of the State of Maryland. Investigation indicates that plaintiff, although being apprised by several different drivers of his rig over the course of several months that the brakes were not working properly, specifically and affirmatively refused to authorize repairs deemed necessary by attending mechanics, instead opting for superficial repairs which corrected the symptoms but not the underlying mechanical problems.

On February 19, 1981, the rig, while being driven by Robert Keyser, a Direct Transit employee, in consequence of brake failure went out of control on a mountainous downgrade. Before it could be brought to a safe stop on a subsequent upgrade, it collided with another tractor-trailer, caroming so that when it came to a stop it smashed into 14 cars, killing three persons and injuring seven others. A resulting fire led to the hospitalization of five members of the responding [125 MICH APP 645] volunteer fire department and possible smoke inhalation injuries to six other persons.

Among the supporting documents is an affidavit by Donald C. Maiers, a Maryland state policeman, who investigated the accident and interviewed both witnesses and other investigators, wherein he concludes:

> "Your affiant believes, based on his personal observations, interviews conducted, and information received, Marvin Robert Deur had intentionally and knowingly adopted and enforced a policy of poor maintenance of the vehicle leased to Direct Transit, Inc., and other vehicles similarly leased. These activities of Deur directly contributed to the incident which resulted in the deaths of three persons in Frostburg, Maryland, on February 18, 1981."

In relevant part, § 3a of the Uniform Criminal Extradition Act provides:

> "The governor of this state may also surrender, on demand of the executive authority of any other state, any person in this state charged in such other state in the manner provided in section 3 with committing an act in this state, or in a third state, intentionally resulting in a crime in the state whose executive authority is making the demand, and the provisions of this act not otherwise inconsistent shall apply to such cases, even though the accused was not in that state at the time of the commission of the crime, and has not fled therefrom, and the requirements contained in subdivisions (d) and (e) of section 3 of this act shall not apply to such cases."

Section 3 of the act provides in pertinent portion:

> "No demand for extradition of a person charged with a crime in another state shall be recognized by the [125 MICH APP 646] governor unless in writing, acompanied by the following papers:
>
> "(1) Governor's requisition under the seal of the state;
>
> "(2) Prosecutor's application for requisition for the return of a person charged with crime, wherein shall be stated:
>
> "(a) The name of the person so charged;
>
> "(b) The nature of the crime;
>
> "(c) The approximate time, place and circumstances of its commission;
>
> • • •

"(f) The state in which he is believed to be, including the location of the accused therein, at the time the application is made; certifying that, in the opinion of the said prosecuting attorney, the ends of justice require the arrest and return of the accused to the demanding state for trial, and that the proceeding is not instituted to enforce a private claim;

"(3) verification by affidavit of said application, which shall be accompanied by certified copies of the indictment returned, • • • stating the offense with which the accused is charged • • •. Affidavits or documents as the prosecutor may deem proper may be submitted with such application;

"(4) Executive warrant, under the seal of the state, authorizing agent, therein named, to receive the person demanded;

"(5) The indictment • • • made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state; and the copy of indictment • • • must be authenticated by the executive authority making the demand." MCL 780.3; MSA 28.1285(3).

The authenticity of the documents in the present case is not challenged, and it was stipulated in the circuit court that § 3a of the Uniform Criminal Extradition Act is constitutional, as this Court held in *Eroh v Manistee County Sheriff*, 86 Mich App 545, 549-550; 272 NW2d 720 (1978).

[125 MICH APP 647] The crucial language, therefore, is that portion of § 3a which requires that the accused be charged with "committing an act in this state • • • intentionally resulting in a crime in the state whose executive authority is

making the demand". The adverb "intentionally" does not, grammatically or phraseologically, modify the noun "crime" but the participial phrase "committing an act". To construe the statue otherwise would raise ignorance of the law to the level of a complete defense, and would also mean that deliberate acts not intended to have criminal consequences would carry with them no criminal responsibility.

Moreover, the question of intent is one of form; the statute requires only that the criminal charge made by the demanding state implicate the accused in an intentional act. The issue of intention need not be determined solely by examining the indictment, the request for rendition, or the governor's warrant. All supporting documents must be examined to determine whether a claim of intent is made. As the court held in *Ex parte Harrison*, 568 SW2d 339, 342 (Tex Crim App, 1978):

> "However, we believe the better practice is to judge the substance of the charge upon which the extradition is based by considering the 'charging instrument' in conjunction with the supporting requisition documents. This Court followed that rule, without articulating it, in *Ex parte Malone* [378 SW2d 330 (Tex Crim App, 1964)]. In that case the indictment charged a violation of the Arkansas Hot Check Law and there were no allegations in the indictment that any acts were committed in Texas or in a third state intentionally resulting in a crime in Arkansas; however, this court stated:
>
> " 'The affidavits of the prosecuting attorney and the prosecuting witness show that although appellant's acts were committed in this state, they intentionally resulted in a crime in Arkansas, which under Sec. 6 • • • authorized appellant's surrender on demand of the governor of Arkansas, even though he was not in that state at

the time of the commission of the crime and had not fled therefrom.'

"For cases from other jurisdictions which have looked beyond the 'charging instrument' to other requisition documents to determine the adequacy of the 'charge' in extradition cases, see *Greenbaum v Darr*, 220 Kan 525; 552 P2d 993 (1976); *State of Kansas v Holeb*, 188 Neb 319; 196 NW2d 387 (1972); *In re Cooper*, 53 Cal 2d 772; 3 Cal Rptr 140; 349 P2d 956 (1960), *app dis* and *cert den* 364 US 294; 81 S Ct 104; 5 L Ed 2d 83 (1960); *In re Harris*, 170 Ohio St 151; 163 NE2d 762 (1959); and *Ex parte Arrington*, 270 SW2d 39 (Mo Sup Ct, 1954)."

In the present case, it is clear that Deur is charged with committing an intentional act in Michigan which resulted in the crime of manslaughter in Maryland. While in Michigan, Deur intentionally refused to authorize needed repairs to the brake system of the tractor-trailer rig, knowing, by virtue of having licensed the rig for operation in Maryland, that it would be driven in that state. It was Deur's self-imposed contractual obligation to maintain the vehicle, and the fact that it was in the custody and control of Direct Transit, Inc., does not absolve him of liability where, as here, part of the evidence relied upon in bringing the charge is that Direct Transit's drivers repeatedly asked Deur to authorize the repairs and he refused. This is not a situation in which Deur was prevented from fulfilling his contractual obligations.

The issue is strictly one of whether the extradition papers, on their face, are sufficient to bring the case within the governor's statutory, discretionary authority.

"Petitioner argues further that he can be extradicted [125 MICH APP 649] only afer a finding by the trial court that he committed an intentional act that resulted in a

> crime in California. To rebut the allegation of intent in the warrant [failure to pay child support], he offered evidence that he was financially unable to make the support payments. We do not construe the statute to require that the trial court find that the accused committed an intentional act. Rather, the question of intent is relevant only to the sufficiency of the demand for extradition. It is not an element to be proved in the responding state. Instead, it is a jurisdictional fact which must appear from the face of the supporting documents. See *Hagel v Hendrix*, 302 SW2d 323 (Mo App). Accordingly, the basis for extradition in the instant case is that Conrad has been charged in California in the manner provided in Section 60-1-3 • • •. The trial court was therefore under no duty to admit the evidence offered to prove Conrad was financially unable to make the support payments." *Conrad v McClearn*, 166 Colo 568, 571-572; 445 P2d 222, 224 (1968).

Additionally, it should be noted that § 3(3) of the statute specifically contemplates that various supporting documents may and will often be submitted in support of the extradition request, and these must be considered together with the indictment and request for extradition. Like the majority of jurisdictions, Michigan entertains only the narrowest possible judicial inquiry in extradition matters. *Eroh, supra; Brown v Wayne County Sheriff*, 415 Mich 658; 330 NW2d 335 (1982). This is particularly appropriate where, as here, the decision of the Michigan governor to honor the request for extradition is discretionary; it is not for the courts of this state to breach the doctrine of separation of powers, Const 1963, art 3, § 2, by reviewing the governor's exercise of discretion.

Reversed.

MICHIGAN CIRCUIT COURT OPINION AND JUDGEMENT

STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNTY OF NEWAYGO

MARVIN ROBERT DEUR, Plaintiff, vs. SHERIFF OF THE COUNTY OF NEWAYGO, STATE OF MICHIGAN, PROSECUTING ATTORNEY FOR THE COUNTY OF NEWAYGO, STATE OF MICHIGAN, STATE OF MARYLAND, Defendants.	No. 81-6680-AH

OPINION

Marvin Robert Deur petitioned this court for a Writ of Habeas Corpus for the purpose of inquiring into the legality of a Governor's Warrant issued on the 2nd day of July, 1981, by Governor William G. Milliken, Governor of the State of Michigan, pursuant to the demand of the State of Maryland. The court ordered the Sheriff of the County of Newaygo, Michigan, the Prosecuting Attorney of the County of Newaygo, Michigan and Sheriff Donald R. Wade or his representative, Agent for the State of Maryland, to show cause why the writ should not be allowed.

A hearing on the court's Order to Show Cause was set for September 22, 1981, and adjourned to December 4, 1981,

for the reason that the Governor's Warrant of July 2, 1981, which appeared defective on its face, was retracted by the Governor on September 18, 1981. The Governor's Warrant which is the subject of this controversy was reissued on the 21st day of September, 1981.

The issuance and reissurance of the Governor's Warrant was precipitated by a demand made by the Governor of the State of Maryland for the requisition and return of the petitioner, Marvin Robert Deur, to answer indictments returned in the April term of 1981, by the Grand Jury for the County of Allegany, State of Maryland, of three counts of manslaughter by motor vehicle, in relation to the deaths of Ruth Margaret Bowen, Gary E. Marsh and Charles Harrison Mitter.

Supporting documentation accompanying the demand allege that on or about February 18, 1981, in Frostburg, Allegany County, State of Maryland, a semi-tractor and trailer driven by Robert Keyser, as an employee of Direct Transit Lines, Inc. of Grand Rapids, Michigan, was involved in a multiple vehicle, multiple fatality accident. It alleges that the semi-tractor and trailer was operated a speeds in excess of the posted speed limit as it descended from a mountain ridge directly west of Frostburg down US-40 east into that City. The semi-tractor and trailer allegedly struck numerous vehicles as it entered the City and ultimately propelled one vehicle into a building resulting in a building collapse and fire and death to the three persons named in the Grand Jury indictment.

There is no allegation that the petitioner was in the State of Maryland on or about February 18, 1981, or that he has even been in that State. The connection between this accident and petitioner, Marvin Robert Deur, and thus the Maryland criminal charges is that petitioner is the alleged owner of the semi-tractor and trailer. He apparently leased the same

to Direct Transit Lines, Inc. granting to it exclusive control and possession of the equipment which Direct Transit Lines, Inc. was exercising on February 18, 1981, in the State of Maryland. However, petitioner, by virture of the lease, was to furnish all operating and maintenance costs, and to keep and maintain the equipment in good condition as to mechanical care. It is further alleged in the Affidavit of Donald C. Maiers at page 3:

> ". . . Marvin Robert Deur had intentionally and knowingly adopted and enforced a policy of poor maintenance of the vehicle leased to Direct Transit, Inc. and other vehicles similarly leased. These activities of Deur directly contributed to the incident which resulted in the deaths of three persons in Frostburg, Maryland, on February 18, 1981."

It is also alleged that a cause of the accident was brake failure due to this policy of poor maintenance to the extent that the Grand Jurors of the County of Allegany, State of Maryland, charge that petitioner ". . . unlawfully, in a grossly negligent manner, did kill and slay . . ." the three persons who died as a result of the accident in violation of the criminal law of the State of Maryland.

It is clear from the foregoing facts and conceeded by the parties that the petitioner is alleged to have committed acts or omitted acts in the State of Michigan which resulted in a crime in the State of Maryland. In this circumstance section 3a of the Uniform Criminal Extradition Act (MCLA 780.3a) is the authority for the Governor's Warrant. That section reads as follows:

> "Sec. 3a. The governor of this state may also surrender, on demand of the executive authority of any other state, any person in this state charged in such other state in the

> manner provided in section 3 with comitting an act in this state, or in a third state, intentionally resulting in a crime in the state whose executive authority is making the demand, and the provisions of this act not otherwise inconsistent shall apply to such cases, even though the accused was not in that state at the time of the commission of the crime, and has not fled therefrom, and the requirements contained in subdivision (d) and (e) of section 3 of this act shall not apply to such cases."
>
> (MCLA 780.3a)

The parties further conceed that although extraditions under MCLA 780.3a are constitutional they are not mandated by the extradition clause of Article IV of the United States Constitution which does mandate fugitive extraditions occurring under MCLA 780.2.

In these circumstances the parties disagree as to the scope and nature of the court's inquiry into an extradition under MCLA 780.3a.

The petitioner challenges the sufficiency of the extradition documents and claims that the court should inquire and determine whether petitioner did commit an act in Michigan intentionally resulting in the crime with which he is charged in the State of Maryland. Petitioner further claims that this is a jurisdictional fact and unless the same is established the Writ of Habeas Corpus should issue. On the authority of *Williams* v *Wayne County Sheriff*, 39 Mich 204 (1975) the petitioner claims the court should consider in making this determination the evidence submitted at the hearing held on December 4, 1981, as the Governor's finding of the existence of the jurisdictional fact recited in the Governor's Warrant creates only a presumption which may be rebutted.

The petitioner further offers that the documents upon which the extradiction of petitioner is sought fail to establish factually the jurisdictional basis for the extradition in that the nature of the offense charged in the State of Maryland negates any inference of intentional conduct on the part of the petitioner resulting in a crime in the State of Maryland or that the petitioner committed any act in the State of Michigan intending that a crime occur in the State of Maryland. Petitioner further contends that even if the documents do establish the jurisdictional fact that the evidence presented at the hearing refutes the same.

The defendants claim that the court can do no more than decide the following:

1. whether the extradition documents are on their face in order;

2. whether petitioner has been charged with a crime in the demanding state;

3. whether he is the person named in the extradition request.

The defendants further claim that the documents upon which extradition is sought do establish the jurisdictional fact.

At the outset, the court would observe that there seems to be little precedent to guide the court in a permissive extradition under MCLA 780.3a. This observation is no doubt shared by the parties for at the hearing, all vowed to appeal a ruling by this court adverse to their respective causes.

Preliminarily, this court would determine that the nature and scope of this court's inquiry in habeas corpus proceedings under MCLA 780.3a is not limited to that set forth in the case

of *Michigan* v *Doran*, 439 US 282, 99 S Ct 530 (1978). *Michigan* v *Doran* concerns and is limited to fugitive extraditions mandated by Article IV, §2, Clause 2 of the United States Constitution as reflected at MCLA 780.2 and not permissive extraditions reflected at MCLA 780.3a which is the authority for the demand made by the State of Maryland in the case at issue. Be that as it may, this court does recognize the necessity of conservatism relative to the nature and scope of any extradition inquiry to "preclude any state from becoming a sanctuary for fugitives from justice of another state and thus "balkanize" the administration of criminal justice among the several states (*Michigan* v *Doran*, supra).

Notwithstanding the case of *Eroh* v *Mainistee County Sheriff*, 86 Mich App 545 (1978) which indicates that the scope of inquiry in a habeas corpus proceeding under MCLA 780.3a is limited to the identity of the accused and whether the demanding state has substantially charged the commission of a crime within its jurisdiction, this court would expand the scope of inquiry to include the jurisdictional facts of whether the accused committed an act in this state, or in a third state, intentionally resulting in a crime in the state whose executive authority is making the demand.

The *Eroh* v *Manistee County Sheriff* decision was handed down some months prior to the United States Supreme Court decision in the case of *Michigan* v *Doran* and this court is of the opinion that the *Eroh Court* considered the determination of "substantially charged" to be a "probable cause" inquiry which of that nature would have included an examination of the jurisdictional fact. Such was the law of Michigan prior to the *Michigan* v *Doran* (supra) decision.

Thus, simply stated, the nature and scope of the court's inquiry shall be limited to the form of the demand as is required by MCLA 780.3 accepting that the language "substantially

charged" contained in MCLA 780.3(5) means only the determination that a neutral judicial officer of the State of Maryland has determined that probable cause exists; and, whether the accused committed an act in this state, or in a third state, intentionally resuling in a crime in the state whose executive authority is making the demand as is required by MCLA 780.3a.

There are two reasons for determining the foregoing to be the nature and scope of the court's inquiry in the habeas corpus proceeding now before it. The first is obvious. The accused has a right under our system of criminal justice to know what acts are proscribed and what conduct on his part shall subject him to criminal jeopardy. No where in the law is it proscribed that an act done in abstentia of a demanding state by Michigan citizens or those who would seek the protection of Michigan law, even though apparently harmless by Michigan standards, could subject that person to another state's criminal jurisdiction other than in MCLA 780.3a. Thus, in fairness to an accused found within the jurisdiction of the State of Michigan this court feels compelled to afford MCLA 780.3a a separate and distinct consideration as opposed to reading it, as it may be read, assimilated with MCLA 780.3. Assuming all of the speculations concerning the petitioner's conduct in the case at bar are true, who would have had the foresight to determine that he had subjected himself to the criminal process of all of the states having a criminal law similar to that of the State of Maryland under which he is charged?

The second reason is that the asylum state has a legitimate interest in exposing and learning of those acts taking place within its jurisdiction with the intent that crime be committed in a sister state. Just as the founding fathers sought to avoid the situation where one state becomes a haven for those who committed criminal acts in another state, the asylum state in this electronic age has some responsibility to detect apparently

harmless conduct within its jurisdiction which is in fact of criminal design. By exposing and sharing such information with its sister states, the ends of criminal justice can best be realized.

As to the case at bar, the petitioner does not challenge that he is the person charged by the State of Maryland and the one subject to the demand. Further, the court would determine that the form of the demand is consistent with MCLA 780.3 as constructed by *Michigan* v *Doran* (supra).

The court does now proceed to determine whether the supporting documentation recites facts upon which it can be determined that the petitioner committed an act in this state intentionally resulting in the crime with which he is charged in the State of Maryland. The supporting documents reveal that the tractor involved in the accident was owned by the petitioner and leased to Direct Transit Lines, Inc. They demonstrate that by the terms of the lease agreement, the petitioner was responsible for the maintenance of the tractor in good condition as to mechanical care. They state that Captain Bruce Diehle, Maryland State Police, Commander, Automotive Safety Enforcement Division, examined the tractor after the accident and is of the opinion that the brakes on the tractor were defective and failed due to lack of maintenance of the same. Further, that the tractor was last repaired on February 16, 1981, two days before the accident, by Quality Diesel Service, Inc. of Grand Rapids, Michigan. Also by the terms of lease agreement between petitioner and Direct Transit Lines, Inc., on the date of the accident the tractor was in the exclusive control and possession of Direct Transit Lines, Inc. and was being operated in the State of Maryland by an employee of that corporation.

It is this court's opinion that the foregoing facts, accepted as being true, do not by any standard of evidence, show that

the petitioner committed any act in the State of Michigan intentionally resulting in the crime with which he is charged in the State of Maryland.

For the foregoing reasons, this court would issue the writ of habeas corpus prayed for by the petitioner.

February 9, 1982.

/s/ Terrence R. Thomas,
Circuit Judge

STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNTY OF NEWAYGO

MARVIN ROBERT DEUR, Plaintiff vs. SHERIFF OF THE COUNTY OF NEWAYGO, STATE OF MICHIGAN, PROSECUTING ATTORNEY FOR THE COUNTY OF NEWAYGO, STATE OF MICHIGAN, STATE OF MARYLAND, Defendants.	No. 81-6680-AH

JUDGMENT AND ORDER

At a session of said Court, held in the Courthouse in the City of White Cloud, County and State aforesaid on the 24th day of February, 1982.

PRESENT: HONORABLE TERRENCE R. THOMAS, CIRCUIT JUDGE

This cause coming on to be heard on the 4th day of December, 1981, upon the Complaint of Plaintiff and Order to Show Cause, pursuant to GCR 712 and MCLA 780.9, to inquire into the cause of detention of Plaintiff; the Court having heard the matter, after due notice to all persons having an interest in continuing the restraint, and Defendants having appeared herein by and through the Prosecuting Attorney for the County of Newaygo, State of Michigan, and the Attorney General for the State of Maryland; and

It appearing that the detention, and continued restraint, of Plaintiff would be and is unlawful for the reasons set forth in the Court's Opinion herein of February 9, 1982;

IT IS HEREBY ORDERED AND ADJUDGED that Marvin Robert Deur be and is hereby discharged from custody and any further restraint of his person upon the Warrant and Authorization of the Governor of the State of Michigan authorizing his delivery to the State of Maryland to answer to the offense of manslaughter by motor vehicle.

IT IS FURTHER ORDERED AND ADJUDGED that Marvin Robert Deur shall be released and discharged from such bail or recognizance furnished previously herein or at arraignment upon said Warrant.

/s/ Terrence R. Thomas,
Circuit Judge

UNIFORM CRIMINAL EXTRADITION ACT

"UNIFORM CRIMINAL EXTRADITION ACT

Act 144, 1937, p 218; eff October 29.

AN ACT relative to and to make uniform the procedure on interstate extradtion; to prescribe penalties for the violation of the provisions of this act; and to repeal all acts and parts of acts inconsistent with the provisions of this act.

The People of the State of Michigan enact:

[MCLA 780.1; MSA 28.1285(1)] Sec. 1. Where appearing in this act, the term "governor" includes any person performing the functions of governor by authority of the law of this state. The term "executive authority" includes the governor, and any person performing the functions of governor in a state other than this state. The term "state," referring to a state other than this state, includes any other state or territory, organized or unorganized, of the United States of America.

[MCLA 780.2; MSA 28.1285(2)] Sec. 2. Subject to the provisions of this act, the provisions of the constitution of the United States controlling, and any and all acts of congress enacted in pursuance thereof, it is the duty of the governor of this state to have arrested and delivered up to the executive authority of any other state of the United States any person charged in that state with treason, felony, or other crime, who has fled from justice and is found in this state.

[MCLA 780.3; MSA 28.1285(3)] Sec. 3. No demand for extradition of a person charged with a crime in another state shall be recognized by the governor unless in writing, accompanied by the following papers:

(1) Governor's requisition under the seal of the state;

(2) Prosecutor's application for requisition for the return of a person charged with crime, wherein shall be stated:

(a) The name of the person so charged;

(b) The nature of the crime;

(c) The approximate time, place and circumstances of its commission;

(d) That the accused was present in demanding state at the time of ciommission of alleged crime;

(e) That he thereafter fled from the state;

(f) The state in which he is believed to be, including the location of the accused therein, at the time the application is made; certifying that, in the opinion of the said prosecuting attorney, the ends of justice require the arrest and return of the accused to the demanding state for trial, and that the proceeding is not instituted to enforce a private claim;

(3) Verification by affidavit of said application, which shall be accompanied by certified copies of the indictment returned, or information and affidavit filed, or of the complaint made to the judge or magistrate, and the warrant issued thereupon, stating the offense with which the accused is charged, or of the judgment of conviction or of a sentence imposed in execution thereof, together with a statement by executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of his bail, probation or parole. Affidavits or documents as the prosecutor may deem proper may be submitted with such application;

(4) Executive warrant, under the seal of the state, authorizing agent, therein named, to receive the person demanded;

(5) The indictment, information, or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state; and the copy of indictment, information, affidavit, judgment or conviction or sentence must be authenticated by the executive authority making the demand.

[MCLA 780.3a; MSA 28.1285(3-1/2)] Sec. 3a. The governor of this state may also surrender, on demand of the executive authority of any other state, any person in this state charged in such other state in the manner provided in section 3 with committing an act in this state, or in a third state, intentionally resulting in a crime in the state whose executive authority is making the demand, and the provision of this act not otherwise inconsistent shall apply to such cases, even though the accused was not in that state at the time of the commission of the crime, and has not fled therefrom, and the requirements contained in subdivisions (d) and (e) of section 3 of this act shall not apply to such cases.

[MCLA 780.4; MSA 28.1285(4)] Sec. 4. When a demand shall be made upon the governor of this state by the executive authority of another state for the surrender of a person so charged with crime, the governor may call upon the attorney general or any prosecuting officer in this state to investigate or assist in investigating the demand, and to report to him the situation and circumstances of the person so demanded, and whether he ought to be surrendered.

[MCLA 780.5; MSA 28.1285(5)] Sec. 5. When it is desired to have returned to this state a person charged in this

state with a crime, and such person is imprisoned or is held under criminal proceedings then pending against him in another state, the governor of this state may agree with the executive authority of such other state for the extradition of such person before the conclusion of such proceedings or his term of sentence in such other state, upon condition that such person be returned to such other state at the expense of this state as soon as the prosecution in this state is terminated.

The governor of this state may also surrender on demand of the executive authority of any other state any person in this state who is charged in the manner provided in section twenty-two [22] of this act with having violated the laws of the state whose executive authority is making the demand, even though such person left the demanding state involuntarily.

[MCLA 780.6; MSA 28.1285(6)] Sec. 6. If the governor decides that the demand should be complied with, he shall sign a warrant of arrest, which shall be sealed with the state seal, and be directed to any peace officer or other person whom he may think fit to entrust with the execution thereof. The warrant must substantially recite the facts necessary to the validity of its issuance.

[MCLA 780.7; MSA 28.1285(7)] Sec. 7. Such warrant shall authorize the peace officer or other person to whom directed to arrest the accused at any time and any place where he may be found within the state and to command the aid of all peace officers or other persons in the execution of the warrant, and to deliver the accused, subject to the provisions of this act to the duly authorized agent of the demanding state.

[MCLA 780.8; MSA 28.1285(8)] Sec. 8. Every such peace officer or other person empowered to make the arrest, shall have the same authority, in arresting the accused, to command assistance therein, as peace officers have by law in the execu-

tion of any criminal process directed to them, with like penalties against those who refuse their assistance.

[MCLA 780.9; MSA 28.1285(9)] Sec. 9. No person arrested upon such warrant shall be delivered over to the agent whom the executive authority demanding him shall have appointed to receive him unless he shall first be taken forthwith before a judge of a court of record in this state, who shall inform him of the demand made for his surrender and of the crime with which he is charged, and that he has the right to demand and procure legal counsel; and if the prisoner or his counsel shall state that he or they desire to test the legality of his arrest, the judge of such court of record shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus. When such writ is applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the prosecuting officer of the county in which the arrest is made and in which the accused is in custody, and to the said agent of the demanding state.

[MCLA 780.10; MSA 28.1285(10)] Sec. 10. Any officer who shall deliver to the agent for extradition of the demanding state a person in his custody under the governor's warrant, in wilful disobedience to the last section, shall be guilty of a misdemeanor and, on conviction, shall be fined, not more than one thousand [1,000] dollars or be imprisoned not more than six [6] months, or both.

[MCLA 780.11; MSA 28.1285(11)] Sec. 11. The officer or persons executing the governor's warrant of arrest, or the agent of the demanding state to whom the prisoner may have been delivered, may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or person having charge of him is ready to proceed on his route, such officer or person being chargeable with the expense of keeping.

The officer or agent of a demanding state to whom a prisoner may have been delivered following extradition proceedings in another state, or to whom a prisoner may have been delivered after waiving extradition in such other state, and who is passing through this state with such a prisoner for the purpose of immediately returning such prisoner to the demanding state may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or agent having charge of him is ready to proceed on his route, such officer or agent, however, being chargeable with the expense of keeping: Provided, however, That such officer or agent shall produce and show to the keeper of such jail satisfactory written evidence of the fact that he is actually transporting such prisoner to the demanding state after a requisition by the executive authority of such demanding state. Such prisoner shall not be entitled to demand a new requisition while in this state.

[MCLA 780.12; MSA 28,1285(12)] Sec. 12. Whenever any person within this state shall be charged on the oath of any credible person before any judge or magaistrate of this state with the commission of any crime in any other state and, except in cases arising under section 3a, with having fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his bail, probation or parole, or whenever complaint shall have been made before any judge or magistrate in this state setting forth on the affidavit of any credible person in another state that a crime has been committed in such other state and that the accused has been charged in such state with the commission of the crime, and, except in cases arising under section 3a, has fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his bail, probation or parole, and is believed to be in this state, the judge or magistrate shall

issue a warrant directed to any peace officer commanding him to apprehend the person named therein, wherever he may be found in this state, and to bring him before the same or any other judge, magistrate or court who or which may be available in or convenient of access to the place where the arrest may be made, to answer the charge or complaint and affidavit, and a certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant.

[MCLA 780.13; MSA 28.1285(13)] Sec. 13. The arrest of a person may be lawfully made also by any peace officer without a warrant upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or imprisonment for a term exceeding one [1] year, but when so arrested the accused must be taken before a judge or magistrate with all practicable speed and complaint must be made against him under oath setting forth the ground for the arrest as in the preceding section; and thereafter his answer shall be heard as if he had been arrested on a warrant.

[MCLA 780.14; MSA 28.1285(14)] Sec. 14. If from the examination before the judge or magistrate it appears that the person held is the person charged with having committed the crime alleged, and[, except in cases arising under section 3a,] that he has fled from justice, the judge or magistrate must, by a warrant reciting the accusation, commit him to the county jail for such a time not exceeding 30 days and specified in the warrant, as will enable the arrest of the accused to be made under a warrant of the governor on a requisition of the executive authority of the state having jurisdiction of the offense, unless the accused give bail as provided in the next section, or until he shall be legally discharged.

[MCLA 780.15; MSA 28.1285(15)] Sec. 15. Unless the offense with which the prisoner is charged to be an offense

punishable by death or life imprisonment under the laws of the state in which it was committed, a judge or magistrate in this state may admit the person arrested to bail by bond, with sufficient sureties, and in such sum as he deems proper, conditioned for his appearance before him at a time specified in such bond, and for his surrender, to be arrested upon the warrant of the governor of this state.

[MCLA 780.16; MSA 28.1285(16)] Sec. 16. If the accused is not arrested under warrant of the governor by the expiration of the time specified in the warrant or bond, a judge or magistrate may discharge him or may recommit him for a further period not to exceed sixty [60] days, or a judge or magistrate judge may again take bail for his appearance and surrender, as provided in section fifteen [15], but within a period not to exceed sixty [60] days after the date of such new bond.

[MCLA 780.17; MSA 28.1285(17)] Sec. 17. If the prisoner is admitted to bail; and fails to appear and surrender himself according to the conditions of his bond, the judge, or magistrate by proper order, shall declare the bond forfeited and order his immediate arrest without warrant if he be within this state. Recovery may be had on such bond in the name of the state as in the case of other bonds given by the accused in criminal proceedings within this state.

[MCLA 780.18; MSA 28.1285(18)] Sec. 18. If a criminal prosecution has been instituted against such person under the laws of this state and is still pending, the governor, in his discretion, either may surrender him on demand of the executive authority of another state or hold him until he has been tried and discharged or convicted and punished in this state.

[MCLA 780.19; MSA 28.1285(19)] Sec. 19. The guilt or innocence of the accused as to the crime of which he is charged

may not be inquired into by the governor or in any proceeding after the demand for extradition accompanied by a charge of crime in legal form as above provided shall have been presented to the governor, except as it may be involved in identifying the person held as the person charged with the crime.

[MCLA 780.20; MSA 28.1285(20)] Sec. 20. The governor may recall his warrant of arrest or may issue another warrant whenever he deems proper.

[MCLA 780.21; MSA 28.1285(21)] Sec. 21. Whenever the governor of this state shall demand a person charged with a crime or with escaping from confinement or breaking the terms of his bail, probation or parole in this state, from the executive authority of any other state, or from he chief justice or an associate justice of the supreme court of the District of Columbia authorized to receive such demand under the laws of the United States, he shall issue a warrant under the seal of this state, to some agent, commanding him to receive the person so charged if delivered to him and convey him to the proper officer of the county in this state in which the offense was committed.

[MCLA 780.22; MSA 28.1285(22)] Sec. 22. 1. When the return to this state of a person charged with crime in this state is required, the prosecuting attorney shall present to the governor his written application for a requisition for the return of the person charged, in which application shall be stated the name of the person so charged, the crime charged against him, the approximate time, place and circumstances of its commission, the state in which he is believed to be, including the location of the accused therein, at the time the application is made and certifying that, in the opinion of the said prosecuting attorney the ends of justice require the arrest and return of the accused to this state for trial and that the proceeding is not instituted to enforce a private claim.

2. When the return to this state is required of a person who has been convicted of a crime in this state and has escaped from confinement or broken the terms of his bail, probation or parole, the prosecuting attorney of the county in which the offense was committed the parole board, or the warden of the institution or sheriff of the county, from which escape was made, shall present to the governor a written application for a requisition for the return of such person, in which application shall be stated the name of the person, the crime of which he was convicted, the circumstances of his escape from confinement or of the breach of the terms of his bail, probation or parole, the state in which he is believed to be, including the location of the person therein at the time application is made.

3. The application shall be verified by affidavit, shall be executed in duplicate and shall be accompanied by two certified copies of the indictment returned, or information and affidavit filed, or of the complaint made to the judge or magistrate, stating the offense with which the accused is charged, or of the judgment of conviction or of the sentence. The prosecuing officer, parole board, warden or sheriff may also attach such further affidavits and other documents in duplicate as he or they shall deem proper to be submitted with such application. One [1] copy of the application, with the action of the governor indicated by endorsement thereon, and one [1] of the certified copies of the indictment, complaint, information, and affidavits, or of the judgment of conviction or of the sentence shall be filed in the office of the secretary of state to remain of record in that office. The other copies of all papers shall be forwarded with the governor's requisition.

[MCLA 780.23; MSA 28.1285(23)] Sec. 23. In all extradition cases the expenses therefor shall be paid out of the county treasury in the county wherein the crime is alleged to have been committed. The expenses shall be the fees paid to the officers of the state on whose governor the recquisition is

made, and all other necessary and reasonable expenses in returning such prisoner.

[MCLA 780.24; MSA 28.1285(24)] Sec. 24. A person brought into this state by, or after waiver of, extradition based on a criminal charge shall not be subject to service of personal process in civil actions arising out of the same facts as the criminal proceedings to answer which he is being or has been returned, until he has been convicted in the criminal proceeding, or, if acquitted, until he has had reasonable opportunity to return to the state from which he was extradited.

[MCLA 780.25; MSA 28.1285(25)] Sec. 25. Any person arrested in this state charged with having committed any crime in another state or alleged to have escaped from confinement, or broken the terms of his bail, probation or parole may waive the issuance and service of the warrant provided for in sections six [6] and seven [7] and all other procedure incidental to extradition proceedings, by executing or subscribing in the presence of a judge of any court of record within this state a writing which states that he consents to return to the demanding state: Provided, however, That before such waiver shall be executed or subscribed by such person it shall be the duty of such judge to inform such person of his rights to the issuance and service of a warrant of extradition and to obtain a writ of habeas corpus as provided for in section nine [9].

If and when such consent has been duly executed it shall forthwith be forwarded to the office of the governor of this state and filed therein. The judge shall direct the officer having such person in custody to deliver forthwith such person to the duly accredited agent or agents of the demanding state, and shall deliver or cause to be deliverd to such agent or agents a copy of such consent.

[MCLA 780.26; MSA 28.1285(26)] Sec. 26. Nothing in this act contained shall be deemed to constitute a waiver by this state of its right, power or privilege to try such demanded person for crime committed within this state, or of its right, power or privilege to regain custody of such person by extradition proceedings or otherwise for the purpose of trial, sentence or punishment for any crime committed within this state, nor shall any proceedings had under this act which result in, or fail to result in, extradition be deemed a waiver by this state of any of its rights, privileges or jurisdiction in any way whatsoever.

[MCLA 780.27; MSA 28.1285(27)] Sec. 27. After a person has been brought back to this state by, or after waiver of extradition proceedings, he may be tried in this state for other crimes which he may be charged with having committed here as well as that specified in the requisition for his extradition.

[MCLA 780.28; MSA 28.1285(28)] Sec. 28. The provisions of this act shall be so interpreted and construed as to effectuate its general purposes to make uniform the law of those states which enact it.

[MCLA 780.31; MSA 28.1285(31)] Sec. 31. This act may be cited as the "uniform criminal extradition act".

STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNTY OF NEWAYGO

MARVIN ROBERT DEUR, Plaintiff, vs. SHERIFF OF THE COUNTY OF NEWAYGO, STATE OF MICHIGAN, PROSECUTING ATTORNEY FOR THE COUNTY OF NEWAYGO, STATE OF MICHIGAN, STATE OF MARYLAND, Defendants.	File No. COMPLAINT FOR WRIT OF HABEAS CORPUS

David R. Munroe [P-18681]
Attorney for Plaintiff

COMPLAINT

NOW COMES Marvin Robert Deur, by and through his attorneys, Landman, Luyendyk, Latimer, Clink & Robb, and states:

1. That this Complaint is brought pursuant to GCR 712 and MCLA 780.9.

2. The Writ of Habeas Corpus is applied for and on behalf of Marvin Robert Deur, who is restrained or is threatened with a loss of his liberty by virtue of his arrest upon a Governor's Warrant issued by William G. Milliken, Governor of the State of Michigan, a copy of which is attached hereto as Exhibit A, pursuant to the demand of the State of Maryland,

a copy of which is attached hereto as Exhibit B, for extradition from the State of Michigan to the State of Maryland.

3. That Marvin Robert Deur is restrained by the sheriff of the County of Newaygo, State of Michigan under the authority of said Governor's Warrant.

4. That Marvin Robert Deur has been restrained in the County of Newaygo, State of Michigan.

5. That said warrant has been issued upon a request by the State of Maryland to extradite said Marvin Robert Deur, a resident of the State of Michigan to the State of Maryland to answer to, and for trial upon an indictment alleging that said Marvin Robert Deur, in a grossly negligent manner, did kill or slay Ruth Margaret Bowen, Gary E. Marsh, and Charles Harrision Mitter. Said indictment is attached hereto as Exhibit C.

6. That said Governor's Warrant is illegal, unlawful and invalid in that:

a. Said warrant is not in conformity with the provisions of MCLA 780.1 et seq, being the Uniform Criminal Extradition Act.

b. Said demand of the State of Maryland is not in conformity with the provisions of MCLA 780.1 et seq.

c. That Marvin Robert Deur has not committed nor is he alleged to have committed, nor has it been substantially charged or alleged that he committed any act for which extradition is authorized under the provision of MCLA 781.1 et seq.

7. That the State of Maryland is without jurisdiction of the person or the acts of Marvin Robert Deur, and has failed to substantially charge a crime in its jurisdiction.

8. The extradition of Marvin Robert Deur is violative of the Fourth, Fifth and Fourteenth Amendments of the Constitution of the United States of America.

9. That Marvin Robert Deur is not a fugitive from justice as is defined in 18 USCA 1382, Article IV, Sec. 2 of the U.S. Constitution or MCLA 780.2, as is shown by Exhibit D.

WHEREFORE, plaintiff prays that this Honorable Court grant a Writ of Habeas Corpus for the purpose of inquiry into the legality of plaintiff's restraint, pursuant to GCR 712 and MCLA 780.9, and order the Sheriff of the County of Newaygo, the Prosecuting Attorney of the County of Newaygo, and the State of Maryland to show cause why plaintiff should not be discharged from custody, restraint, and process issued pursuant to the demand and request of the State of Maryland.

Dated: August 3, 1981.

/s/ David R. Munroe
Landman, Luyendyk,
Latimer, Clink & Robb
Attorneys for Plaintiff
Business Address:
400 Terrace Plaza
Muskegon, Michigan 49443
Telephone: 616/722-2671

Subscribed and sworn to before me
this 3rd day of August, 1981.
/s/ Bernice T. Komosinski
Notary Public, Muskegon Co., MI
My commission expires: 9-17-83

MICHIGAN GOVERNOR'S WARRANT

[Original document is a pre-printed form; italicized wording has been typed in blank spaces.]

STATE OF MICHIGAN
EXECUTIVE DEPARTMENT

WILLIAM G. MILLIKEN
GOVERNOR

To the Sheriff of the County of *NEWAYGO*, State of Michigan; and any other officer in this state authorized by the uniform extradition act of Michigan to execute this warrant:

Whereas, requisition has been made upon me by the Governor of the Sate of *MARYLAND* for the arrest and extradition of *MARVIN ROBERT DEUR* wherein it has been represented to me that said *MARVIN ROBERT DEUR* stands charged with committing acts in the State of Michigan intentionally resulting in a crime in the State of *MARYLAND*, To wit: *MANSLAUGHTER BY MOTOR VEHICLE* alleged to have been committed on *OR ABOUT MAY 1, 1980 THROUGH FEBRUARY 13, 1981* and that said *MARVIN ROBERT DEUR* is believed to be located in the *COUNTY OF NEWAYGO*, in the State of Michigan, as appears by a certified copy of *INDICTMENT, AFFIDAVIT AND SUPPORTING PAPERS* and other documents duly certified to be authentic and duly authenticated; according to the laws of the State of *MARYLAND* and of this State;

Therefore you are hereby required forthwith to arrest and secure the said *MARVIN ROBERT DEUR* wherever *HE* may be found within this State and to take *HIM* forthwith before any judge of a court of record in this State in whose jurisdic-

tion *HE* may be, for further proceedings in accordance with the uniform extradition act of this State; and after compliance therewith; unless discharged by law, to deliver *HIM* to *SHERIFF DONALD R. WADE OR HIS REPRESENTATIVES*, the agents appointed by the Governor of the State of *MARYLAND* to receive *HIM*. You will make return of this warrant within thirty days to the Governor of Michigan; and of the proceedings thereunder, and of the time and manner of this service thereof.

In Testimony Whereof, I have hereunto set my hand, and caused the Great Seal of the State to be affixed at Lansing, this *21ST* day of *SEPTEMBER* in the year of our Lord one thousand nine hundred and *EIGHTY-ONE*.

[seal omitted.]

/s/ William G. Milliken
GOVERNOR

By the Governor:
/s/ Richard H. Austin
Secretary of State

MARYLAND GOVERNOR'S WARRANT

[Original document is a pre-printed form; italicized wording has been typed in blank spaces.]

THE STATE OF MARLAND

EXECUTIVE DEPARTMENT

To all to Whom These Presents Shall Come, Greeting:

Know Ye, THAT I have authorized and empowered and by these presents do authorize and empower *SHERIFF DONALD R. WADE OR HIS REPRESENTATIVE,* as Agent(s) for the State of Maryland, to take and receive from the proper authorities of the State of *MICHIGAN* a certain *MARVIN ROBERT DEUR* who stands charged with the crime of *MANSLAUGHTER BY MOTOR VEHICLE* which I certify to be a crime under the laws of this State, by intentionally committing an act in the State of *MICHIGAN* resulting is said crime in this State, and convey him/her, the said *MARVIN ROBERT DEUR* to this State, there to be dealt with according to law.

The Agent(s) aforesaid is (are) hereby directed to execute the requisition for the said *MARVIN ROBERT DEUR* and make full report of her/his proceedings, without delay, to this office.

Witness my Hand and the Great Seal of the State of Maryland

[seal omitted.] Done at the City of Annapolis on the *NINETEENTH* day of *JUNE* Nineteen Hundred and *EIGHTY-ONE*

Governor of Maryland
By the Governor :

/s/ Fred F. Wineland
Secretary of State

MARYLAND GOVERNOR'S REQUISITION

[Original document is a pre-printed form; italicized wording has been typed in blank spaces.]

STATE OF MARYLAND

EXECUTIVE DEPARTMENT

To his Excellency the Governor *of Michigan*

Whereas, It appears by the application for requisition and copies of *Indictment, Affidavit, Police Report and Docket Entries* hereto annexed and duly authenticated in accordance with the Laws of this State, that *Marvin Robert Deur* under the Laws of this State stands charged with the crime of *manslaughter by motor vehicle* which I certify to be a crime under the Laws of this State, by intentionally committing an act in the State of *Michigan* resulting in said crime in this State.

And Whereas it has been represented and is satisfactorily shown to me that the said *Marvin Robert Deur* is now to be found in the State of Michigan.

Now, Therefore, pursuant to the provisions of the Constitution and the Laws of the United States, the Laws of the State of *Michigan* in such case made and provided,

I, *Harry Hughes*, Governor of the State of Maryland, do hereby respectfully demand that the said *Marvin Robert Deur* be arrested and secured and delivered to *Sheriff Donald R. Wade or his representative* who is hereby authorized to receive and convey and transport the said *Marvin Robert Deur* to the State of Maryland, there to be dealt with according to law.

Given under my hand and the Great Seal of the State of Maryland.

Done at the City of Annapolis, on this *nineteenth* day of *June* in the year of our Lord one thousand nine hundred *eighty-one*.

/s/ Harry Hughes
By the Governor

/s/ Fred L. Wineland
Secretary of State

[Seal omitted]

MARYLAND PROSECUTOR'S REQUISITION

[Original document is a pre-printed form; italicized wording has been typed in blank spaces.]

APPLICATION FOR REQUISITION
OR
MARVIN ROBERT DEUR

W-M-DOB: 2-15-34

White Cloud, Michigan

To His Excellency,

The Governor of Maryland.

Sir:

I, *Lawrence V. Kelly*, State's Attorney, in and for *Allegany* County, Maryland, do hereby make application for the requisition and return to this State *Marvin Robert Deur*, who stands charged by accompanying certified copy of *Indict-*

ment, now pending in the *Circuit* Court of *Allegany* County, with the crime of *Manslaughter by Motor vehicle (3 Counts)*, having committed an act or acts on or about the *1st day of May, 1980, thru the 18th* day of *February, 1981*, in the State of *Michigan* which intentionally resulted in commission of said crime in the said County of this State and is now a fugitive from justice of this State and is located in White Cloud, County of *Newaygo*, State of *Michigan*.

The ends of justice, in my opinion, require that he be brought to this State for trial.

In my opinion, the facts stated in said application and accompanying documents are true, and I believe that the prosecution of said fugitive would result in his conviction of the crime charged. This Application for Requisition of said fugitive is not sought for the purpose of collecting a debt, or enforcing a civil remedy, or to answer any other private end whatever.

I nominate *Donald R. Wade (or his representative)* of *Allegany* County as proper person to be appointed and commissioned by you as the Agent of this State to receive the said fugitive when surrendered and return him to *Allegany* County. I certify that the Agent has no private interest in the proposed arrest.

/s/ Lawrence V. Kelly
State's Attorney for
Allegany County

[Verification and notarizations omitted].

INDICTMENT

STATE OF MARYLAND, ALLEGANY COUNTY, TO-WIT:

The Jurors of the State of Maryland, for the body of Allegany County, do on their oath present that MARVIN ROBERT DEUR, late of Allegany County, on or about the 18th day of February, 1981, in Allegany County, unlawfully, in a grossly negligent manner, did kill and slay Ruth Margaret Bowen; contrary to the form of the Act of Assembly in such case made and provided and against the peace, government, and dignity of the State.

(Article 27, Section 388)

SECOND COUNT

And the Jurors aforesaid, upon their oath aforesaid, do further present that MARVIN ROBERT DEUR, late of Allegany County, on or about the 18th day of February, 1981, in Allegany County, unlawfully, in a grossly negligent manner, did kill and slay Gary E. Marsh; contrary to the form of the Act of Assembly in such case made and provided and against the peace, government, and dignity of the State.

(Article 27, Section 388)

THIRD COUNT

And the Jurors aforesaid, upon their oath aforesaid, do further present that MARVIN ROBERT DEUR, late of Allegany County on or about the 18th day of February, 1981, in Allegany County, unlawfully, in a grossly negligent manner, did kill and slay Charles Harrison Mitter; contrary to the form of the Act of Assembly in such case made and provided and against the peace, government, and dignity of the State.

(Article 27, Section 388)

/s/ Lawrence V. Kelly
State's Attorney
for Allegany County

MARYLAND STATE POLICEMAN'S AFFIDAVIT

I, Donald C. Maiers, do make oath the following facts are true and correct:

I have been a Maryland State Policeman for 11 years. I have received training in accident investigation and reconstruction; and during my service, I have investigated hundreds of accidents.

On February 19, 19[illegible], I was assigned the investigation of an accident which occurred in Frostburg, Mayland, the same date. When I arrived at the scene, I observed a tractor partially lodged in Stoops' Restaurant which was involved in a fire. I observed the trailer which had been attached to the tractor in the middle of Main Street with its contents spilled there. I also observed numerous vehicles in and adjacent to Main Street (U. S. Route 40) which had suffered damage. My investigation revealed the tractor involved in the accident was owned by Marvin Robert Deur (EXHIBIT #1), had been leased to Direct Transit, Inc., and at the time of the accident was operated by Robert Keyser. Attached hereto is a copy of my Accident Report (EXHIBIT #2) which more particularly describes the vehicles involved, personal injuries sustained, and deaths (3) which resulted from the accident.

This accident was also investigated by the National Transportation Safety Board, and copies of their reports are attached hereto (EXHIBIT #3 A, B, and C).

The tractor was also examined by Captain Bruce Diehl, Maryland State Police, Commander, Automotive Safety Enforcement Division. Captain Diehl advised the brakes on the tractor were defective and failed due to a lack of maintenance of same (EXHIBIT #4).

A copy of the Lease Agreement (EXHIBIT #5) established Marvin Robert Deur, the owner, had the primary obligation for maintenance of this vehicle.

On March 9, and 10, 1981, I visited Grand Rapids, Michigan, and interviewed numerous witnesses regarding maintenance of this and other vehicles leased to Direct Transit, Inc. by Marvin Robert Deur. Among those interviewed were Jerry Cleaver, U. S. Department of Transportation, John Peterson, Safety and Personnel Director for Direct Transit, Inc., Ben Bandlow, Union Steward, Local 406, Teamsters, Michael Cook, Dwayne Parker, other current and former drivers, and Robert Ward, Union Representative. I was advised that the condition of the trucks was poor due to failure to maintain them. I was informed that the union had filed grievances relative to the problems. Drivers were provided with forms by Direct Transit to report defects; and when they were exhausted, no forms were then supplied. The drivers, upon making complaints, were instructed to contact Mr. Deur. The drivers were instructed to bring the tractors to Deur's place of business (White Cloud, Michigan, some 50 miles from the terminal in Grand Rapids) on Saturdays when repairs would be made. The drivers, due to the distance and the fact the repairs were to be done on their time off, then failed to make complaints. This was verified by the U. S. Department of Transportation, Bureau of Motor Carrier Safety Surveys on April 11, 1978, and February 27, 1981 (Page 6, EXHIBIT #3 A).

I also interviewed Norman Carey, owner-operator of Quality Diesel Service, Inc., Grand Rapids, Michigan, who had made repairs to the tractor involved on February 16, 1981. Mr. Carey advised he had done repair work on Marvin Robert Deur's vehicles leased to Direct Transit. Mr. Carey advised Deur had instructed him not to make any major repairs to any of his vehicles and to do only what was required to get them

in service. Mr. Carey characterized his work on the vehicles as largely cosmetic, i.e., "bubble gum and bailing wire" type repairs, never substantial. Mr. Carey advised the vehicle was brought in by Robert Keyser, and he made minor repairs and adjustments as his practice with Deur had been. Mr. Carey indicated that over several months prior to February, 1981, all his work for Deur did not exceed $3,000.00 in billings.

Your Affiant interviewed Michael Cook, a driver and currently employed by Direct Transit, Inc., who advised the tractors leased from Deur were poorly maintained. The driver further advised on November 4, 1980, while operating a tractor leased from Deur, the brakes failed on Route 48, on Savage Mountain, Allegany County. Mr. Cook called Deur and advised the brakes failed. Deur advised Cook to adjust the brakes himself and continue. Mr. Cook did so, but he discovered the brake shoes were badly worn, and one brake drum was cracked. M. Cook again called Deur to indicate the existence of these conditions. Deur told Mr. Cook to continue driving and to bring the vehicle back to White Cloud, Michigan, for repairs. Mr. Cook indicated he did so. He later checked the tractor and discovered the brake had not been replaced.

Your Affiant interviewed Karl Warn, Kentwood, Michigan, who, during 1980 and early 1981, was a driver for Direct Transit, Inc. and operated tractors leased to Direct Transit, Inc. by Marvin Robert Deur. Mr. Warn advised that on January 12, 1981, while operating a tractor leased by Deur, he had an accident near the terminal in Grand Rapids where he struck a car in the rear end due to brake failure. Mr. Warn personally contacted Marvin Robert Deur, who indicated the brakes were probably frozen and the driver (Warn) should warm them with a fusee. Mr. Warn did so but also called Deur to advise that the brakes needed repaired which Deur refused to authorize. Later, Mr. Warn had the brakes repaired in Ohio as they

had not been attended to after the accident. At the end of January, 1981, Mr. Warn was operating a Deur leased vehicle which had a grease seal leak. As Mr. Warn couldn't get enough pressure to release the brakes, he took the vehicle to Quality Diesel. There, a mechanic called Deur in Mr. Warn's presence. Deur advised the mechanic to back the "brakes off" and let the driver go. The mechanic responded that the bearings could go at anytime. Deur refused to authorize repairs and repeated his instructions to the mechanic, who then complied.

Your Affiant believes, based on his personal observations, interviews conducted, and information received, Marvin Robert Deur had intentionally and knowingly adopted and enforced a policy of poor maintenance of the vehicle leased to Direct Transit, Inc. and other vehicles similarly leased. These activities of Deur directly contributed to the incident which resulted in the deaths of three persons in Frosburg, Maryland, on February 18, 1981. Your Affiant asserts the end of justice requires the return to Maryland of Marvin Robert Deur to answer the charges now pending.

/s/ Tfc. Donald C. Maiers
TFC. DONALD C. MAIERS
MARYLAND STATE POLICE
AFFIANT

Subscribed and sworn to before me this 17th day of June, 1981.

/s/ [Signature illegible]
JUDGE

TRANSPORTATION'S SAFETY BOARD REPORT

NATIONAL TRANSPORTATION SAFETY BOARD
Bureau of Accident Investigation
Washington, D.C. 20594
March 30, 1981

VEHICLE GROUP FACTUAL REPORT

A. ACCIDENT

Accident:	Direct Transit Lines, Inc., Tractor-Semi-trailer/Multiple Vehicle/ Building Collision and Fire
Location:	U.S. Route 40 in Frostburg, Maryland
Date:	February 18, 1981
NTSB No.:	DCA-81-AH-005 Docket No. NY-325-81

B. VEHICLE GROUP

The following persons met on February 20, 1981 in Frostburg, Maryland to conduct the post impact inspection.

C. Harris	IIC, Group Chairman National Transportation Safety Board
B. Diehl	Commander-Automotive Safety Enforcement Division Maryland, State Police
R. Ketenheim, II	OIC, Special Agent DOT—Office of Motor Carrier Safety
D. Maires	Trooper, Investigating Officer Maryland State Police
D. Miller	Trooper, Investigating Officer Maryland State Police
J. Ferrari	District Representative International Harvester Corporation

C. SUMMARY OF ACCIDENT

On February 18, 1981, a tractor-semitrailer loaded with building supplies was traveling eastbound on U.S. Route 40, a two lane mountain highway approaching Frostburg, Maryland. The combination vehicle apparently lost braking control and passed and side swiped a pickup truck as it descended the steep 3-mile grade. It continued eastbound and entered the city limits of Frostburg at a high rate of speed striking 8 vehicles and pushing these vehicles into 6 additional vehicles. The combination vehicle continued eastbound through the crowded downtown business district and finally veered to the right into a three story commercial building after several consecutive vehicular impacts.

The force of impact drove the tractor and a previously struck vehicle inside the building causing the floor and right front corner to collaspe. An explosion and fire erupted immediately. Three persons were fatally injured and twelve other vehicle occupants sustained injuries of varying degrees. No pedestrians were reported injured.

D. VEHICLE INFORMATION

The vehicle's group investigation included a detailed examination of the mechanical subsystems and exterior damage on the International Harvester (IHC) tractor-semitrailer. A cursory description of the remaining fifteen struck vehicles is compiled in attachment (1). A photographic summary of the inspected combination vehicle is presented in attachment (2).

General Information

The combination vehicle was a 1976 International Harvester Corporation (IHC), cab over engine, 3 axle tractor pulling a flatbed semitrailer. The tractor was equipped with a 290 H.P. diesel engine and a 10 speed manual transmission. The semi-

trailer was a 1973 Brown flatbed tandem axle semitrailer. Both vehicles were registered in the state of Michigan and had a probable gross combination vehicle weight of approximately 70,230 lbs. at the time of the accident.

Detail Description

Tractor:	1976 IHC tractor, cab over engine (equipment No. 314)
Owner:	Marvin Deur, White Cloud, Michigan
Leased to:	Direct Transit Lines, Inc., Grand Rapids Michigan
Manufacturer:	International Harvester Corporation
VIN:	E2327FGFA14570
Model No.:	COF 4070 B
Build Date:	April 19, 1976
Engine:	Six cylinder Cummins Diesel (NTC-290)
Transmission:	Fuller Road Ranger (RT-1110)
Tire Size:	10:00 R 20
Mileage:	Hub reading approximately 66,000 miles.
Fuel Capacity:	123 gallons
Overall Length:	220.4 inches
Overall height:	148.1 inches
Overall width:	93.5 inches
Wheel base:	143.0 inches

Trailer:	1973 Brown tandem axle flatbed semitrailer, (equipment No. 3032)
Owner:	Marvin Duer, White Cloud Michigan
Leased to:	Direct Transit Lines, Inc., Grand Rapids, Michigan
Manufacturer:	Brown—Division of Clark Equipment
VIN:	M723004
Overall Length:	480.4 inches
Overall width:	96 inches

E. VEHICLE DAMAGE

Tractor

Extensive fire damage was observed on the tractor. The majority of the fiberglass tilt cab, driver's compartment engine controls, attaching nonmetallic body components, and fuel tanks were destroyed by the fire. All windows and other glass components (i.e., exterior lamps) were missing.

Front

The front bumper was pushed inboard and rearward on both right and left corners. The engine radiator was skewed to the right and forced rearward about 8 inches at the top right corner.

Left Side

The left side door was found dislodged from the body. The left side frame rail was exposed and the front section of the frame rail appeared to have been bent vertically downward during impact. The left outer tire was also forced off the rearmost drive axle during impact.

Right Side

The engine exhaust stack had separated from its original mounting and was found resting against the right side frame rail. The tractor's fifth wheel was severed from its frame crossmember during impact.

Trailer

The semitrailer was inspected after the load had been removed, and was not damaged as severely as the tractor. Fire damage was confined to the frontal area. The semitrailer's header board was charred and slightly distorted. The wooden bed was also heavily charred around the mid section, and the forward mounted trailer supports were bent slightly outboard.

F. MECHANICAL SUBSYSTEM INSPECTION (Tractor)

Engine

The tractor was equipped with a 855 cubic inch turbo charged 6 cylinder Cummins diesel engine. The engine had a maximum governed speed ranging between 1,950 and 2,100 rpm. The engine was inspected to determine if it had been over revved before impact. The cylinder heads were removed and the engine's valves and fuel pump were checked. The valves assembly and push rods appeared to be undamaged and the fuel pump was functional.

Transmission and Drivetrain

The tractor was equipped with a Fuller Road Ranger 10 speed manual transmission without overdrive. The transmission was unbolted from the vehicle and the shift linkage cover plate was removed. A representative of IHC inspected the transmission for abnormalities. No excessive wear was observed on any of the mechanical gear assemblies or shift mechanisms. The transmission was determined to be in the ninth gear, high range position, that had a final gear ration of 1.27 to 1.

Both rear axle differentials were visually inspected and appeared to be intact. The rear axle ratio for both differentials was determined to be 3.73 to 1.

Suspension

The tractor was equipped with semi-elliptical steel leaf springs on all axles. Both front and rear suspension had been subjected to considerable impact damage. The front steering axle was skewed to the left from impact damage and the rearmost drive axle was completely detached from the tractor with several suspension members missing.

Tires

The following tires were mounted on the tractor:

Position	*Manufacturer*	*Size*
Front Steering axle	TOYO	10:00R20
Front drive axle	B.F. Goodrich	10:00R20
Rear drive axle	TOYO	10:00R20

All of the tires were deflated and had been subjected to considerable fire damage, except for the left outer tire forced off the rearmost drive axle. It was inflated and appeared to be in good condition.

Brakes

The tractor service brakes were air activated drum type brakes with the "S" cam design. The air brake system could not be pressurized due to extensive fire damage to the brake equipment hardware. The system was inspected and the following discrepancies were noted:

(1) The spring brakes on the front drive axle were destroyed by fire

(2) The left rear drive axle brake actuator was broken from its mounting

(3) The right drive axle brake drum had exceeded the limit for the diameter size of 16.625 inches vs. 16.620 inches limit

(4) The brake linings were in good condition except for the following:

A. The right rear drive axle brake linings were worn to the rivets

B. The left rear drive axle brake linings had 50 percent of the lining remaining

(5) The slack adjustments were measured by hand for each axle brake actuator and are reported below:

Position	*Actuator Type*	*Measured Slack Adjustment*	*Recommended Stroke at which to Readjust*
Front Steering axle	Clamp Type 16	1.75 in.	1.75 in.
Front Drive axle	Clamp Type 30	1.75 in.	2.00 in
Rear Drive axle*	Clamp Type 30	1.75 in.	2.00 in

*Slack adjustment was not measured for the left rear drive axle actuator.

G. MECHANICAL SUBSYSTEM INSPECTION (Trailer)

Suspension

The trailer suspension was inspected and the following discrepancies were observed:

(1) The U-bolt assemblies for the rear tandem axle leaf springs were extremely loose. The fasteners could be turned by hand.

(2) The welds for the leaf spring saddles were cracked on the left front, right rear, and left rear tandem axles.

Tires

The trailer was equipped with seven 11-24.5 and one 10:00-22 tubless regroovable commercial tires. All of the tires were inflated and the air pressure levels varied from 73 to 88psi. The tires were in generally good condition with the following exceptions:

(1) The right front inner tire was cut on the inside with tire cords exposed

(2) The left front outer tire had bald spots visible in the tread.

Brakes

The trailer service brakes were also air activated drum type brakes with "S" design. The system was pressurized and inspected, and the following discrepancies were noted:

(1) There was an external air leak near the regulator reservoir tank.

(2) The right front and left rear brake actuators had excessive slop between the bushings and clevis pin.

(3) The service brakes remained applied for only 7 minutes, 29 seconds after the air supply was removed from the trailer.

(4) Slack adjustment were measured for each axle brake actuator and are noted below:

Position	*Actuator Type*	*Measured Slack Adjustment*	*Recommended Stroke at which to Readjust*
Right Front	Clamp Type 30	1.500 in.	2.00 in.
Left Front	Clamp Type 30	2.250 in.	2.00 in.
Right Rear	Clamp Type 30	2.500 in.	2.00 in.
Left Rear	Clamp Type 30	2.375 in.	2.00 in.

H. VEHICLE AND CARRIER INSPECTION

The combination vehicle was registered in the state of Michigan and not subject to an annual inspection by the State.

Direct Transit Lines, Inc., operated 125 truck tractors, 135 semitrailers, and employed 114 over the road drivers. The company is authorized to engage in interstate and intrastate commerce involving the transportation of general freight under the interstate commerce dockets Nos. 046240 and 106603 re-

spectively. The company is therefore subject to complying with the Federal Motor Carrier Safety Regulations (FMCSR).

On April 11, 1980 and February 27, 1981, the U.S. Department of Transportation, Bureaus of Motor Carrier Safety conducted safety compliance surveys on the Direct Transit Lines, Inc. A summary of the survey results is indicated below:

April 11, 1978

This survey noted 46 violations of the FMCSR. The majority of violations were cited for:

(1) Failing to maintain or falsification of drivers' daily logs (FMCSR Part 395.8)

(2) Failing to keep proper inspection and maintenance records (FMCSR Part 396.2)

The safety investigator recommended that a follow-up survey be conducted within 12 months.

February 27, 1981

This survey noted 127 violations of FMCSR. The majority of violations were cited for:

(1) Failure to maintain or falsification of drivers' daily logs (FMCSR Part 395.8)

(2) Motor Vehicle Equipment (FMCSR Part 393)

I. VEHICLE MAINTENANCE

The following is a summary of the latest vehicle maintenance performed on the combination vehicle prior to the accident:

Date	*Repaired Items*	*Performed By*
(1) February 16, 1981	Quality Diesel Service, Grand Rapids, Michigan	Reference Attachment 3
(2) July 31, 1980*	Hudsonville Trailer Hudsonville, Michigan	Reference Attachment 4

*Equipment number for the unit repaired per this invoice does not match with accident semitrailer number i.e., 3081 US. 4181.

The driver vehicle condition report (pre-trip inspection records) were reviewed and none of the deficiencies recorded had any bearing on accident causation.

/s/ Claude H. Harris
Claude H. Harris
Investigator in Charge

NATIONAL TRANSPORTATION SAFETY BOARD
Bureau of Technology
Washington, D. C. 20594
April 10, 1981

HUMAN FACTORS GROUP CHAIRMAN FACTUAL REPORT

A. ACCIDENT

Accident : Direct Transit Lines, Inc. Tractor-Semi Trailer/Multiple Vehicle/ Building Collision and Fire

Location : U.S. Route 40 in Frostburg, Maryland

Date : February 18, 1981

NTSB No. : DCA-81-AH-005

B. HUMAN FACTORS GROUP

C. Harris : IIC, Group Chairman, National Transportation Safety Board

F. Ghiorsi : Highway Safety Specialist NTSB - New York Field Office

C. SUMMARY

On February 18, 1981, about 4:15 p.m., a tractor-semitrailer loaded with building supplies accelerated out of control while descending a steep 3 mile grade near Frostburg, Maryland. The combination vehicle was traveling eastbound on U.S. Route 40 when it passed and side swiped a pick-up truck traveling slower in the eastbound lane, entered the city limits and struck 8 vehicles, and pushed these vehicles into 6 additional vehicles. After several consecutive impacts, the combination vehicle finally veered rightward, overturned, and plowed into a 3 story commercial building before coming to rest. Three persons were fatally injured and twelve other vehicle occupants sustained injuries of varying degrees.

According to witness statements, the combination vehicle was proceeding down Big Savage Mountain at a high rate of speed. None of the witnesses recall hearing a horn signal, or smelling or observing smoke from the service brakes.

Preliminary medical reports indicate that the tractor-semitrailer driver suffered third degree burns over 25 percent of his body.

D. Details of The Investigation

(1) Vehicle Information

The combination vehicle was a 1976 International Harvester cab over engine, 3 axle tractor, pulling a 1973 Brown flatbed semitrailer. The fiberglass tractor body and occupant compartment were completely destroyed by fire and impact dam-

age. The tractor was equipped with type 1 (lap belt) occupant restraints for each designated seating position; however it is now known if they were in use during the accident.

(2) **Driver's Information**

Robert V. Keyser, the 37 year old truck driver, is married and resides in Angola, Indiana. The driver has been employed by the Direct Transit Lines, Inc. since December 1980. He had previously worked for six different companies over a 7 year period primarily as a truck driver.

His Driving experience encompass the following:

Type of Equipment	*Time (Yrs)*	*Mileage (estimated)*
Straight Truck	5	300,000
Tractor-Semitrailer	2-1/2	200,000
Passenger Car	21	250,000

The driver has driven commercial vehicles regularly in the States of Arkansas, Alabama, Ohio, Indiana, Pennsylvania, and Michigan.

The driver held a valid chauffeur license for the State of Indiana which had no restrictions. The following States were contacted by NTSB personnel and requested to perform a driving record check on the above reference truck driver:

State	*Type of Operators License*	*Recorded Violations*
(1) Arkansas	No License No Record	None
(2) Alabama	No License No Record	None
(3) Indiana	Chauffeur	Speeding (1976)
(4) Michigan	No License	Speeding (1962)
(5) Ohio	*	*

(Reference attachment 1 for details)

* No reply has been received to date.

There is no Company or State record of the truck driver being involved in any other motor vehicle accident prior to this one.

The driver held a current medical certificate dated January 13, 1981, as required by Federal Motor Carrier Safety Regulations. His physical examination indicated that the driver was in good health with no reported medical problems. His vision was reported to be 20/22 in both the right and left eyes without corrective lenses.

The driver is a high school graduate and had also completed a course in mechanical and diesel training sponsored by the Sun Equipment Corporation. He had previously worked as a driver-mechanic in Fort Wayne, Indiana, prior to obtaining employment with Direct Transit Lines, Inc.

The driver had been operating this combination vehicle regularly prior to the accident and had recently taken tractor No. 314 in for mechanical repairs on February 16, 1981. (Reference Attachment 2). The company records end as of February 14, 1981. The logs covering the period from February 14, until the accident were destroyed in the fire. It is not known if the driver had ever operated this particular combination vehicle over mountainous terrain.

(3) **Trip Chronology**

The driver had not been interviewed to determine his exact trip itinerary, due to the pending grand jury investigation by the State of Maryland. However, it is known that the driver departed Constantine, Michigan on February 17, 1981 enroute to Landover, Maryland, and Manasas, Virgina, to deliver building supplies. The Maryland State Police retrieved an old atlas from the tractor wreckage which denoted U.S. Route 40 as the primary highway to points south. State Route 48, a four-lane divided, limited access highway, which bypasses the

city of Frostburg and runs parallel to U.S. Route 40, was not even identified on this atlas.

(4) **Injury to Persons**

Injuries	*Driver*	*Occupants of Struck Vehicles*	*Total*
Fatal	0	3	3
Non-Fatal	1	11	12
None	*0*	*11*	*11*
Total	1	25	26

No autopies were performed on the fatally injured to determine the cause of death. The nonfatal injuries consisted of contusions, lacerations, fractures, and first to third degree burns.

(5) **Witness Interviews**

Interviews were conducted by Safety Board personnel of witnesses who had observed the runaway combination vehicle at various positions during its descent down Big Savage Mountain (Reference Attachment 3). The following is a summary of these reported observations:

1.4 miles from top of Mountain

—Combination vehicle passed second brake check area without stopping at an estimated speed of 65 mph.

—No horn signal heard; no smell of burning brakes in air

1.9 miles from top of Mountain

—Combination vehicle was observed moving at a high rate of speed (estimated at 90 mph) near the road shoulder with dust flying up from behind the truck.

—No horn signal heard

2.1 miles from Top of Mountain

—Combination vehicle moving fast into city limits estimated to be going 50 mph upgrade in a 25 mph posted zone.

—No trailer brake lights visible, no horn signal heard

—Combination vehicle forced westbound car off road

Near Stoop's Restaurant (Final Resting Position)

—No horn signal heard

/s/ Claude H. Harris
Claude H. Harris
Investigator-in-Charge

MARYLAND STATE POLICE CAPTAIN'S REPORT

CASE NUMBER 4-81-776 and 4-81-781

1st Ind.

A.S.E.D. March 13, 1981

TO: 1st Lt. Robert G. Yinger—Commander, Cumberland Barrack

FORWARDED: Attached are our vehicle examination reports for the 1976 International Tractor, Case No. 4-81-776, and the 1973 Brown Flatbed Trailer, Case No. 4-81-781, your case number M52-01268AR.

As indicated in Part I, Case 4-81-776, the brakes on the tractor would not meet Maryland safety standards and were contributory to the collision. The right rear inside tire had less

than the required 2/32 inch minimum tread depth; however, this defect was not a factor in the collision.

Part II, Case No. 4-81-781, reflects the trailer had both brake, tire and suspension defects; however, only those listed as contributory on the report would have contributed to the collision. All other defects noted were not related to the collision.

/s/ B. E. Diehl
B. E. Diehl, Captain
Commander, A.S.E.D.

BED:au
Attachments

VEHICLE EQUIPMENT LEASE

CONTRACT EQUIPMENT LEASE

THIS CONTRACT, Made and entered into, by, and between DIRECT TRANSIT LINES, INC., hereinafter referred to as "Carrier" and Marvin Robert Deur hereinafter referred to as "Owner".

WITNESSETH:

WHEREAS, Carrier is engaged in the transportation of property in intrastate and interstate commerce: and,

WHEREAS, Owner is the owner of certain vehicle equipment suitable for the transportation of such property.

NOW, THEREFORE, in consideration of the premises and the mutal premises and agreement and conditions herein contained, it is hereby agreed as follows:

1. Owner hereby contracts with Carrier to transport property with the equipment set forth in Exhibit "A", attached

hereto, and made a part hereof, or equipment which may by agreement between the parties be substituted in lieu thereof, from designated points to designated places in accordance with the rate schedule, set forth in Exhibit B, on file in the principal office of Carrier or which may be attached hereto, or rate schedules which may be subsequently substituted in lieu thereof by carrier.

2. It is to be clearly understood and agreed and it is the intention of the parties hereto that Owner is a contractor only and is not the employee of Carrier. The employee assigned to drive this equipment shall have his seniority teminated upon termination of this lease. It is agreed that the control and possession of the equipment shall be exclusive in the carrier for the full period of this lease. It is agreed that the equipment shall not be used during the full period of this lease for any other purpose other than as directed by the Carrier in pursuance of its services to the public. It is agreed that the Carrier shall be responsible to Third Parties for all lawful and proper operations of said equipment during period of this lease.

3. Owner agrees to paint and letter such equipment in such manner as may be required by Carrier and to remove such painting and lettering when the contract is terminated, to furnish all operating and maintenance costs, and to keep and maintain the equipment above referred to and incorporated herein as Exhibit "A", or equipment substituted therefore, in good condition as to mechanical repair, physical appearance and in good running order and in its operation will fully comply with the rules and requirements of all applicable regulatory authorities and all laws related to traffic safety, highway protection, load requirements, license tags, load weight requirements, clearance of tunnels or other objects, safety equipment, brakes, fire extinguishers, etc. as determined in the sole discretion and judgment of the carrier.

4. Carrier agrees to procure and maintain public liability, property damage and cargo insurance. Truck Owner shall procure and maintain, during period of this lease, at his own expense, such insurance as required by Carrier. Owner agrees to be responsible for physical damage insurance including both collision and comprehensive coverage, on the equipment listed in Exhibit "A".

5. Owner agrees to deposit a waived dollar bond at the time of execution of this agreement, and Carrier may retain such amount to indemnify any and all losses suffered by a breach of the provisions of this Agreement. Owner further agees that the amount of said bond may be retained until such time as any and all regulatory cards and plates have been returned and Carrier's name and permit numbers have been removed from the equipment. Carrier, at its exclusive option, may deduct a certain amount each week from compensation due lessor according to schedule of payment and deposit the amount to Owners account weekly until a waived dollar bond deposit has been accrued.

6. Owner agrees that the payment of a computed sum in accordance with the rate schedule on file in the principal office of Carrier shall be accepted in full payment for the lease of such equipment and for everything done and furnished by Owner under this Contract. Owner agrees that Carrier may deduct from such sums so computed in accordance with the rate schedule, all expeditures required to be made by Carrier because of the default of Owner in complying with any of the obligations under this agreement. Owner further agrees that if, in the performance of this agreement, he shall cause the equipment belonging to Carrier to become impaired in value, except impairment resulting from reasonable and careful use thereof, Owner shall become liable for such impairment of value and agrees that Carrier may make deductions to com-

pensate Carrier for such impairment from monies accruing under the foresaid rate schedule.

7. Owner hereby accepts all risks for depreciation, loss or damage to said equipment and agrees to pay all operating and maintenance costs and keep and maintain the equipment in good condition as to mechanical repair, physical appearance and in good running order. In the event that Owner fails to pay any of said operating costs and maintenance or fails to keep said equipment in good first-class operating condition, Carrier may pay said operating and maintenance costs and is hereby authorized by owner to deduct any such amounts advanced from the compensation due to Owner under the terms of this lease. In the event that Carrier extends credit to Owner or furnishes gasoline, diesel fuel, oil, antifreeze, tires, tubes, filters, or any other materials, Owner will be charged for such material at the fair and reasonable rate, and Carrier is authorized to deduct any such costs from any compensation due Owner under the terms of this agreement.

8. Carrier shall issue and deliver to Owner statements of the rental payable together with a check covering the above-mentioned respective periods for said equipment, with all counter charges deducted as outlined in this lease. If within a ten (10) day period after delivery of above mentioned statement to Owner, Owner does not, in writing, inform Carrier that the statements do not set forth a true statement of moneys due him as outlined in this lease, such statements will be deemed correct and accurate and no complaint regarding said statements will be honored by Carrier thereafter.

9. Carrier shall not be liable for wear or tear or depreciation resulting from the use of the leased equipment, nor shall Carrier be liable for damage caused to the leased equipment by the acts of Owner or by the acts of third parties, or from

fire, theft, or collision, or resulting from the acts of God or other events beyond the control of Carrier.

10. Owner hereby warrants that all of the said vehicles and equipment covered by this lease are free and clear from any and all encumbrances or liens of such nature as to affect the use thereby by Carrier. It is further agreed that the control of the equipment shall be absolute in the Carrier for the full period of this lease, that the equipment shall not be used during the full period of this lease for any purpose other than as directed by the Carrier in the pursuance of its services to the public.

11. Any breach by Owner of the provisions of the equipment lease shall render this agreement subject to immediate termination at the option of Carrier and shall subject Owner to liability for any and all loss, damage or expense resulting to and incurred by Carrier.

12. It is further agreed by and between the parties hereto that no verbal agreements or understandings pertaining to matters contained herein have been entered into, and that all such agreements between the parties hereto are incorporated in this contract, that no operating plan, method or custom, whether now in effect or hereafter adopted, shall in any way or manner vary or change the terms hereof, and that this contract and all the provisions contained herein, shall be interpreted under the laws of the State of Michigan. Owner represents and warrants that he has read this agreement in full, is familiar with its terms and provisions and that no representations have been made by him, directly or indirectly that are not incorporated herein.

13. This Contract and lease shall remain in full force and effect for a period of one (1) year and from year to year thereafter, provided that the agreement may be terminated by either

party on giving a thirty (30) day notice in writing to the other party, and provided that upon termination Carrier, at its exclusive option, may defer settlement and payment of any sum or sums due to Owner for any period not to exceed ninety (90) days and no right to have and receive any sum due, or claimed due hereunder, or to sue or maintain any action or suit at law therefore, shall accrue to Owner until the expiration of said ninety (90) day period.

IN WITNESS WHEREOF, The parties hereto have executed this agreement this 1st day of June 1980.

WITNESSES:

Robert D. Poll /s/
Patricia L. Harvey /s/

Marvin Robert Deur /s/
Truck Owner
Marvin Robert Deur
R 1 White Cloud, MI 49349
Address

John H. Pitman /s/
Carrier
Direct Transit Lines, Inc.
200 Colrain S.W. P. O. Box 8099
Grand Rapids, Michigan 49508
Address

Office - Supreme Court, U.S.
FILED
APR 24 1985
ALEXANDER L. STEVAS,
CLERK

No. 84-1502

IN THE

Supreme Court of the United States

October Term, 1984

SHERIFF OF THE COUNTY OF NEWAYGO, STATE OF MICHIGAN, PROSECUTING ATTORNEY FOR THE COUNTY OF NEWAYGO, STATE OF MICHIGAN, STATE OF MARYLAND,

Petitioner,

vs.

MARVIN ROBERT DEUR,

Respondent.

BRIEF OF THE STATE OF INDIANA AND THE COMMONWEALTHS AND STATES OF ALABAMA, ARIZONA, FLORIDA, KANSAS, MISSOURI, NEBRASKA, NEW HAMPSHIRE, NORTH CAROLINA, VERMONT, AND WYOMING

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STATEMENT OF THE CASE

Respondent Deur was indicted by a Maryland grand jury for the crime of manslaughter by motor vehicle.[1] This charge arose from an accident in Frostburg, Maryland which involved a tractor-trailer rig owned by the Respondent.[2] A description of the accident, in a report of the National Transportation Safety Board, discloses the following:

> On February 18, 1981, a tractor-semitrailer loaded with building supplies was traveling eastbound on US Route 40, a two lane mountain highway approaching Frostburg, Maryland. The combination vehicle apparently lost braking control and passed and sideswiped a pickup truck as it descended the steep three-mile grade. It continued eastbound and entered the city limits of Frostburg at a high rate of speed striking eight vehicles and pushing these vehicles into six additional vehicles. The combination vehicle continued eastbound through the crowded downtown business district and finally veered to the right into a three story commercial building after several consecutive vehicular impacts.

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[1] MD Code, art. 27 §388 provides:

> Every person causing the death of another as the result of the driving, operation or control of an automobile, motor vehicle, motor boat, locomotive, engine, car, street, car, train or other vehicle in a grossly negligent manner, shall be guilty of a misdemeanor to be known as 'manslaughter by automobile, motor vehicle, motor boat, locomotive, engine, car, street car, train or other vehicle,' and the person so convicted shall be sentenced to jail or in the house of correction for not more than three years, or be fined not more than $1,000.00 or be both fined and imprisoned.

In effect, Maryland charged that the Respondent's "grossly negligent" acts in Michigan caused the deaths in Maryland in violation of the statute.

[2] The rig was leased to Direct Lines, Inc. and was being operated by one of the corporation's employees at the time of the accident. Under the terms of the lease, the Respondent was responsible for maintaining the vehicle.

> The force of impact drove the tractor and a previously struck vehicle inside the building causing the floor and right front corner to collapse. Three persons were fatally injured and twelve other vehicle occupants sustained injuries of varying degrees. No pedestrians were reported injured.

In addition, the report noted that on April 11, 1978 and February 27, 1981, safety compliance inspections of vehicles owned by Direct Transit Lines, Inc. revealed numerous violations of the Federal Motor Carriers Safety Regulations (FMCSR) including failing to maintain or falsification of drivers' daily logs and failing to keep proper inspection and maintenance records. Further, Officer Donald C. Maiers of the Maryland State Police investigated the accident and concluded:

> Your Affiant believes, based on his personal observations, interviews conducted, and information received, Marvin Robert Duer had *intentionally and knowingly* adopted and enforced a policy of poor maintenance of the vehicle leased to Direct Transit, Inc. and other vehicles similarly leased. These activities of Deur directly contributed to the incident which resulted in the deaths of three persons in Frostburg, Maryland, on February 18, 1981. (Emphasis added).

Subsequently, the Respondent was arrested on a warrant[3] issued by the Governor of Michigan on a request

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[3] The statute, MCL 7803a; MSA 28-1285 (3-1/2) §6 of the Uniform Criminal Extradition Act, which deals with the extradition of non-fugitives and under which the warrant was issued provides:

> The governor of this state may also surrender on demand of the executive authority of any other state, any person in this state charged in such other state in the manner provided in section 3 with committing an act in this state, or in a third state, intentionally resulting in a crime in the state whose executive authority is making the demand, and the provisions of this act not otherwise inconsistent shall apply to such cases, even though the accused was not in that state at the time of the commission of the crime, and has not fled therefrom, and the requirements contained in subdivision (d) and (e) of section 3 of this act shall not apply to such cases.

for extradition by the Governor of Maryland. The Respondent, however, commenced a habeas corpus action to prevent his extradition. The Newaygo County Circuit Court granted the Respondent's petition for habeas corpus and determined that the charging papers did not have the effect of charging him with having committed an act in Michigan intentionally resulting in the crime with which he was charged in Maryland as required by the statute.

In *Deur v. Newaygo County Sheriff*, 125 Mich. App. 642, 336 N.W.2d 852 (1983), the Michigan Court of Appeals ruled that there need not be an intention that a crime result in the demanding state, but rather only that the act committed in the asylum state be intentional and subsequently result in the crime in the demanding state.[4] The Michigan Supreme Court, however, reversed the Court of Appeals and ruled that the non-fugitive extradition provision of the Uniform Criminal Extradition Act requires an accused to have committed an act in the asylum state coupled with an intent that such act result in a crime in the demanding state.

Presently, the Petitioner seeks to obtain a writ of certiorari to review the opinion of the Michigan Supreme Court. The amici states join the efforts of the Petitioner.

INTEREST OF THE AMICIS CURIAE

The Uniform Criminal Extradition Act was written in 1926 to codify the practice of interstate extradition of

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[4] The Michigan Court of Appeals stated:

> The crucial language, therefore, is that portion of §3a which requires that the accused be charged with 'comitting an act in this state * * * intentionally resulting in a crime in the state whose executive authority is making the demand.' The adverb 'intentionally' does not, grammatically or phraseologically, modify the noun 'crime' but the participial phrase "committing an act." To construe the statute otherwise would raise ignorance of the law to the level of a complete defense, and would also mean that deliberate acts not intended to have criminal consequences would carry with them no criminal responsibility.

fugitives, a right created by the United States Constitution,[5] and a process incompletely regulated by federal law. Commissioners' Prefatory Note, Uniform Criminal Extradition Act, 11 U.L.A. 52-53. The purpose of the extradition clause is twofold: to effectuate the principle of comity by compelling each state to arrest a resident who has been indicted in a sister state and surrender custody to the demanding state; and, to hasten the process of doing so by allowing the asylum state only minimal inquiry into the underlying charge. *Michigan v. Doran*, 439 U.S. 282, 287-288, 99 S.Ct. 530, 534-535 (1978). Section 6[6] of the Extradition Act, however, was a creation of the National Conference and was intended to reach extradition of one who commits a crime against the laws of a state by acts done outside of that state—a situation not covered by existing law. Handbook of the National Conference of Commissioners on Uniform State Laws and Proceedings 591 (1926). Justice Traynor, in *In re Cooper*, 53 Cal. 2d 772, 776, 349 P.2d 956, 959 (1960) commented on the extradition of persons not present in the demanding state at the time of the commission of a crime:

> Modern communication and transportation facilitate the commission of crimes across state lines.

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[5] The extradition clause provides that: A person charged in any State with Treason, Felony, or after Crime, who shall flee from Justice, and be found in another State, shall on demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime. U.S. Const. art. IV, §2, cl. 2.

[6] The Governor of this state may also surrender, on demand of the Executive Authority of any other state, any person in this state charged in such other state in the manner provided in Section 3 with committing an act in this state, or in a third state, intentionally resulting in a crime in the state whose Executive Authority is making the demand, and the provisions of this act not otherwise inconsistent, shall apply to such cases, even though the accused was not in that state at the time of the commission of the crime, and has not fled therefrom.

> A criminal who acts in one state to commit crimes in another may pose a far more serious problem to the latter state than one who commits a crime there and then flees from justice. When the criminal who commits his crime entirely in one state flees, he ordinarily poses no threat of additional crimes therein; if extradition fails, there is only frustration of that state's interest in punishing him. In contrast, the criminal who operates from without the state's borders poses a continuing threat. Since his conduct may be undetected or apparently harmless in the state where he acts, the only effective impetus for prosecution may come from the state that suffers the harm. Far more divisive than a state's refusal to extradite a fugitive for a past offense would be its unwitting provision not only of a base of operation but of an asylum for those who commit crimes without being personally present at the place where their crimes are consummated.

Since the extradition clause of the United States Constitution neither requires nor prohibits enactment of state laws governing non-fugitive extradition, enforcement of section 6 is a matter of comity between the states. Commissioners' Prefatory Note, Uniform Criminal Extradition Act, 11 U.L.A. 53.

In the instant case, section 6 of the Uniform Extradition Act requires that an accused, in order to be extradited, must be charged with "committing an act in this state... intentionally resulting in a crime in the state whose executive authority is making the demand." The Michigan Supreme Court and the Respondent have interpreted this provision as requiring an act of commission rather than omission and that the accused must intend that his actions result in the occurrence of a crime in the demanding state. This interpretation, however, is contrary to the letter and spirit of the extradition act and to the interpretations of the section by various jurisdictions.[7] To interpret section 6 in

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[7] Because the extradition act is a uniform law, decisions from other states are valuable for the interpretation of its provisions. *Dutil v. Rice*, 34 Conn. Sup. 78, 82, 376, A.2d 1119, 1121 (1977).

this manner would raise ignorance of the law to the level of a complete defense. Further, an individual engaged in a deliberate act, intended to have no criminal consequence, could escape criminal liability.

All amici states administer criminal justice systems within their jurisdiction. Each state seeks to promote the safety and welfare of its citizens. Indeed, each state has a fundamental interest in appropriately punishing persons who violate its criminal laws. *Bearden v. Georgia*, ___ U.S. ___, 103 S.Ct. 2064 (1983). If the decision of the Michigan Supreme Court is upheld, in this case, a demanding state may only prosecute an individual who has committed an act/omission in the asylum state who has also intended that the act/omission result in a crime in the demanding state. The amici states submit that this is an unwarranted, narrow construction of section 6 of the act. Further, this hypertechnical interpretation is in contravention of the purpose of the interstate extradition laws. As stated by the Nebraska Supreme Court in *Kansas v. Holeb*, 188 Neb. 319, 321-322, 196 N.W.2d 387, 389 (197.):

> Substantial rights of citizens must be protected, but constitutional and statutory provisions relating to interstate extradition must be liberally construed to effectuate their purpose, and courts of one state must avoid a view of their duties so narrow as to afford permanent asylum to offenders against laws of another state.

For the foregoing reasons, the amici states respectfully request that the petition for certiorari be granted.

REASONS FOR GRANTING THE WRIT

The purpose of interstate extradition is to furnish an expeditious and summary procedure for bringing suspects to trial in the state where the alleged offense was committed. *Biddinger v. Commissioner of Police*, 245 U.S. 128, 38 S.Ct. 41 (1917). The extradition clause of the United States Constitution, Article IV, §2, cl. 2, is intended to allow

each state to bring offenders to trial as quickly as possible in the state where the offense was committed. *Crumley v. Sneed* (5th Cir. 1980) 620 F.2d 481, 483. Extradition is intended not as a preliminary inquiry into the merits of a criminal prosecution, but merely as a summary executive procedure by which an accused can be brought before an appropriate tribunal for adjudication. The Constitution does not contemplate that the asylum state will make a determination of guilt or innocence or conduct "the kind of preliminary inquiry traditionally intervening between the initial arrest and trial." *Michigan v. Doran*, 439 U.S. 282, 288, 99 S.Ct. 530, 535 (1979).

After the governor of the asylum state has granted extradition, a court, in reviewing a petition for habeas relief, may decide only "(a) whether the extradition documents on their face are in order; (b) whether the petitioner has been charged with a crime in the demanding state; (c) whether the petitioner is the person named in the request for extradition; and (d) whether the petitioner is a fugitive." 439 U.S. at 289, 99 S.Ct. at 535.[8] *See Cuyler v. Adams*, 449 U.S. 433, 443 n. 11, 101 S.Ct. 703, 709 n. 11 (1981). It is not the province of courts to inquire into the motives of the governors of the demanding and asylum states. *United States ex rel. Tyler v. Henderson*, (5th Cir. 1971) 453 F.2d 790, 793. Protection of the right of the demanding state to swiftly try alleged offenders who have left its jurisdiction requires that the courts of the asylum state review the extradition documents summarily. Courts of the asylum state are limited to determining the factors listed in *Doran*, characterized by the Supreme Court as "historic facts readily verifiable." 439 U.S. at 289, 99 S.Ct. at 535.

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[8] These requirements which involve fugitive extradition apply by anaology to cases of non-fugitive extradition. *Narel v. Liburdi* (1981) 185 Conn. 562, 441 A.2d 177, *cert. denied*, 456 U.S. 928, 102 S.Ct. 1974. Thus, the inquiry in the instant case is whether the Respondent is a non-fugitive.

Implicit in this notion of limited inquiry by asylum state courts is the now axiomatic rule that courts in an asylum state are not to pass upon the quality, persuasiveness, or weight of the evidential matter on the basis of which the governor of the demanding state issued the extradition warrant. *Sweeney v. Woodall*, 344 U.S. 86, 73 S.Ct. 139 (1952), *Watson v. Mongomery*, (5th Cir. 1970) 431 F.2d 1083. Whatever the scope of discretion vested in the governor of the asylum state, the courts of the asylum state are bound by Act 4, §2 and, where adopted, by the Uniform Criminal Extradition Act. A governor's grant of extradition is prima facie evidence that the constitutional and statutory requirements have been met. *Michigan v. Doran, supra*, 439 U.S. at 288-289, 99 S.Ct. at 535-536. Given such a clear directive concerning the role of state courts in extradition matters, asylum state courts may not expand their inquiry beyond the four-part test set forth in *Michigan v. Doran. See Statchuk v. Warden*, 53 Md. App. 680, 455 A.2d 1000 (1983); *Petition of Upton*, 387 Mass. 359, 439, N.E.2d 1216 (1982).

Therefore, on a petition for habeas corpus, a court in the asylum state may invalidate a governor's rendition warrant only if it finds an infirmity in one of the four areas into which it may inquire.[9] Against this general background, the facts of the instant case and the holding of the Michigan Supreme Court must be examined.

In the instant case, the Michigan Supreme Court upheld the grant of the Respondent's petition for habeas corpus by finding that the charging papers did not have the effect of

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[9] To further the purpose of extradition, several appellate courts in our sister states have held that "the better rule is to judge the substantiality of the 'charge' for purposes of extradition by consideration of the indictments in conjunction with the supporting requisition documents." *Greenbaum v. Darr*, 220 Kan. 525, 528, 552 P.2d 993, 996 (1976). *Accord, In re Cooper*, 53 Cal.2d 772, 349 P.2d 956 (1960), *cert. denied*, 364 U.S. 294, 81 S.Ct. 104.

charging the Respondents with having committed an act in Michigan intentionally resulting in the crime with which he was charged in Maryland as required by the statute. The Michigan Supreme Court interpreted the statutory language of section 6 very narrowly by declaring that non-fugitive extradition is only possible when an accused has the specific intent that a crime occur.

Pursuant to section 3 of the Uniform Criminal Extradition Act, an "indictment, information, or affidavit made before the magistrate must *substantially charge* the person demanded with having committed a crime under the law of that state." (Emphasis added). The question of intent is one of form; the statute requires *only* that the criminal charge made by the demanding state implicate the accused in an intentional act. The issue of intention need not be resolved solely by considering the indictment, the request for rendition, or the governor's warrant. Indeed, all supporting documents must be examined to determine whether a claim of intent is made. In *Ex parte Harrison*, 568 S.W.2d 339, 342 (Tex. Cv. App. 1978), the court ruled:

> However, we believe the better practice is to judge the substance of the charge upon which the extradition is based by considering the 'charging instrument' in conjunction with the supporting requisition documents. This Court followed that rule, without articulating it, in *Ex parte Malone* [378 S.W.2d 330 (Tex. Crim. App. 1964)]. In that case the indictment charged a violation of the Arkansas Hot Check Law and there were no allegations in the indictment that any acts were committed in Texas or in a third state intentionally resulting in a crime in Arkansas; however, this court stated:
>
> > The affidavits of the prosecuting attorney and the prosecuting witness show that although appellant's acts were committed in this state, they intentionally resulted in a crime in Arkansas, which under, Sec. 6 * * * authorized appellant's surrender on demand of the governor of

> Arkansas, even though he was not in that state at the time of the commission of the crime and had not fled therefrom.
>
> For cases from other jurisdictions which have looked beyond the 'charging instrument' to other requisition documents to determine the adequacy of the 'charge' in extradition cases, see *Greenbaum v. Darr*, 220 Kan 525, 552 P.2d 993 (1976); *State of Kansas v. Holeb*, 188 Neb. 319, 196 N.W.2d 387 (1972); *In re Cooper*, 53 Cal.2d 772, 3 Cal.Rptr. 140, 349 P.2d 956 (1960), appeal dismissed and *cert. den.* 364 U.S. 294, 81 S.Ct. 104, 5 L.Ed.2d 83 (1960); *In re Harris*, 170 Ohio St. 151, 163 N.E.2d 762 (1959); and *Ex parte Arrington*, 270 S.W.2d 39 (Mo. Sup. Ct., 1954).

Further, many jurisdictions[10] have adopted an interpretation of the statutory language as relating only to the sufficiency of the charging documents rather than creating any requirement of specific intent in either the demanding or asylum states. The issue is solely one of whether the extradition papers are sufficient to bring the cause within the governor's statutory, discretionary authority:

> Petitioner argues further that he can be extradited only after a finding by the trial court that he committed an intentional act that resulted in a crime in California. To rebut the allegation of intent in the warrant [failure to pay child support], he offered evidence that he was financially unable to make the support payments. We do not construe the statute to require that the trial court find that the accused committed an intentional act. Rather, the question of intent is relevant only to the sufficiency of the demand for extradition. It is not an element to be proved in the responding state. Instead, it is a jurisdictional fact which must appear from the face of the supporting

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[11] *See also Neuman v. Elrod*, 72 Ill. App.3d 616, 391 N.E.2d 37 (1979); *McCullough v. Darr*, 219 Kan. 477, 548 P.2d 1245 (1976).

> documents. See *Hagel v. Hendrix*, 302 S.W.2d 323 (Mo.App.). Accordingly, the basis for extradition in the instant case is that Conrad has been charged in California in the manner provided in Section 60-1-3 * * *. The trial court was therefore under no duty to admit the evidence offered to prove Conrad was financially unable to make the support payments. *Conrad v. McClearn* (1968), 166 Colo. 568, 571-572, 445 P.2d 222, 224.

The interpretation of the non-fugitive provision of the Uniform Criminal Extradition Act by the Michigan Supreme Court mandates that courts of the asylum state interpret the laws of the demanding state to determine what mental element was included in the offense charged. Further, after determining the specific intent required by a particular demanding state, the court in the asylum state must inquire as to the mental state of the accused. With the addition of these two detailed inquiries, non-fugitive extraditions are no longer summary, executive proceedings, but rather detailed evidentiary proceedings in contravention of *Michigan v. Doran, supra.* Because of its nationwide acceptance,[12] the Uniform Criminal Extradition Act must be construed uniformly to be effective. Indeed, non-fugitive extraditions have been consistently upheld in numerous cases where the accused did not specifically intend the commission of a crime.[13] The interpretation of section 6 by the Michigan Supreme Court defeats the purpose of extradition procedures.

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[12] The Uniform Criminal Extradition Act has been enacted in 48 states.

[13] *See*, 11 Uniform Laws Annotated, "Criminal Law and Procedure," p. 166 (1974).

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for writ of certiorari should be granted.

Respectfully submitted,

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No. 84-1502

In The
Supreme Court of the United States
October Term, 1984

SHERIFF OF THE COUNTY OF NEWAYGO, State of Michigan, PROSECUTING ATTORNEY FOR THE COUNTY OF NEWAYGO, State of Michigan, STATE OF MARYLAND,

Petitioners,

v

MARVIN ROBERT DEUR,

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE MICHIGAN SUPREME COURT

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QUESTIONS FOR REVIEW

I.

WHETHER THE DECISION OF THE MICHIGAN SUPREME COURT PRESENTS A FEDERAL QUESTION FOR REVIEW BY THIS COURT.

II.

WHETHER THE NON-FUGITIVE PROVISIONS OF THE MICHIGAN EXTRADITION STATUTE, WHICH FOLLOW THE LANGUAGE OF THE UNIFORM CRIMINAL EXTRADITION ACT, REQUIRE THE MICHIGAN COURT TO ASK WHETHER A PERSON IS CHARGED WITH COMMITTING AN ACT IN MICHIGAN INTENTIONALLY RESULTING IN A CRIME IN THE DEMANDING STATE BEFORE IT PERMITS EXTRADITION.

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OPINIONS BELOW

Respondent adopts Petitioners' statement of the Opinions Below. The opinion of the Michigan Supreme Court has now been officially reported at 420 Mich 440 (1985).

———o———

JURISDICTION

Respondent concedes the Petition was filed timely pursuant to U.S. Supreme Court rule 20.2 and 28 USC § 2101(C).

Respondent disputes jurisdiction premised upon 28 USC § 1257(3), as asserted by Petitioners. The decision of the Michigan Supreme Court, for which review is sought, was premised solely upon construction of a state statute. MCLA 780.3a; MSA 28.1285 (3-½) is Michigan's codification of § 6a Uniform Criminal Extradition Act. The Uniform Criminal Extradition Act is not a "treaty or statute of, or commission held on authority exercised under the United States" as required under 28 USC § 1257(3).

———o———

STATEMENT OF THE CASE

Nature Of The Case And Course Of Proceedings

Respondent accepts Petitioners' description of the nature of the proceedings below.

Counterstatement Of Facts

Respondent disputes Petitioners' recitation of facts at Page 9 of Petitioners' Brief, wherein it is stated:

> The tractor and trailer were both owned by Respondent Deur, were leased to Direct Transit Lines, Inc of Grand Rapids, Michigan and were driven by Robert Keyser, an employee of Direct Transit Lines, Inc. The lease required Respondent Deur to maintain the equipment—including the brakes—in good condition as to mechanical repair and in full compliance "with the rules and requirements of all applicable regulatory authorities and all laws . . . (paragraphs 7, 3; App. 72a, 74a). The National Transportation Safety Board's report included, *inter alia,* a detailed examination of the brakes of the tractor and trailer and numerous discrepancies were noted. App. 61a. Additionally, the report noted that an April 11, 1978 safety compliance survey conducted on Direct Transit Lines, Inc revealed 46 violations of the Federal Motor Carriers Safety Regulations including failing to maintain or falsification of drivers' daily logs and failing to keep proper inspection and maintenance records. App. 64a. A subsequent inspection on February 27, 1981 revealed 127 violations including failure to maintain or falsification of drivers' daily logs and motor vehicle equipment. App. 64a.

The lease referenced related, by its terms, only to the tractor and not the trailer. The lease paragraphs referenced, again by their own terms, placed the financial responsibility for maintaining the equipment upon Respondent, but left solely to the discretion of Direct Transit the standard of maintenance and placed exclusive physical control of the vehicle in the hands of Direct Transit. Finally, although Respondent does not here dispute the findings of the safety compliance surveys referenced by

Petitioners, Respondent does not understand the relevance of the findings to the present cause. There are, and have been, no allegations by either the State of Maryland or the State of Michigan that these findings relate to any act or omission of Respondent.

———o———

REASONS FOR DENYING THE WRIT

I. Certiorari Should Not Be Granted As No Federal Question Is Presented For Review.

Petitioners advance a twofold argument that a federal question is involved providing jurisdiction under 28 USC § 1257(3). First, Petitioners argue that because Respondent asserted claims under the Fourth, Fifth, and Fourteenth Amendments in the trial court, a federal question is involved in the judgment below. Petitioners concede, however, that the Michigan Supreme Court did not address these claims. Second, Petitioners argue that the Uniform Criminal Extradition Act (UCEA) is a federal statute falling within the purview of the Compact Clause and having Congressional approval under the Crime Control Act of 1934, 4 USC § 112(a).

Petitioners should well know jurisdiction cannot be premised upon Respondent's original claims under the Fourth, Fifth and Fourteenth Amendments of the Constitution. There is nothing in the opinion below which addresses any of these Constitutional claims. The sole issue addressed by the decisional majority of the Michigan Supreme Court was the construction of the non-fugitive provisions of the UCEA, as adopted in Michigan, and

the application of that construction to the extradition documents. Constitutional issues originally raised by Respondent, but not decided by the Court, cannot form a basis for Petitioners' appeal. Those issues might come before this Court if this Respondent sought appeal, but he is not doing so.

A State's highest court is free to interpret an enactment of its legislature, and where that interpretation is the basis for decision, no federal question is presented and no basis for review exists. *New York Times v Jascalevich,* 439 US 1317 (1978); *Herb v Pitcairn,* 324 US 117 (1954). Unless it can be said that the UCEA provisions relating to non-fugitives are federal statutes, no federal question is presented by the decision below.

Petitioners rely exclusively upon this Court's decision in *Cuyler v Adams,* 449 US 433 (1981) to support the contention that the UCEA as a whole and the non-fugitive provision, in particular, are federal law. Respondent respectfully submits this is an overly broad reading of *Cuyler, supra,* and would result, as the dissent in *Cuyler* opined, in casting all uniform state legislation as federal law.

In *New Hampshire v Maine,* 426 US 363 (1976) and *US Steel Corp v Multi State Tax Commission,* 434 US 452 (1978) this Court considered the breadth of the Compact Clause stating:

> The application of the Compact Clause is limited to agreements that are "directed to the formation of any combination tending to the increase of political power in the States, which may encroach upon or interfere with the just Supremacy of the United States". *New Hampshire v Maine,* (*supra*), 369 quoting *Virginia v Tennessee,* 148 US at 519.

A State statute, to fall within the scope of the Compact Clause, must be "an agreement" between states. To fall within the prohibition of the Clause, it must encroach upon the supremacy of the United States.

Cuyler, (*supra*), agreeing with the dissent in *US Steel* (*supra*), recognized that Congress, in enacting legislation to approve agreements between the States, makes a political as opposed to a legal judgment. The efficacy of that Congressional action should not depend upon a legal determination that Congressional approval was mandatory under the Compact Clause. Hence, Congressional approval of State agreements will result in those agreements becoming federal law irrespective of whether Congressional approval was required in order to avoid the prohibition of the Compact Clause. As was stated:

> But where Congress has authorized the States to enter into a cooperative agreement, and where the subject matter of that agreement is an appropriate subject for Congressional legislation, the consent of Congress transforms the States' agreement into federal law under the Compact Clause. *Cuyler,* (*supra*) 440.

Cuyler, however, did not say that *any* State legislation, if approved by Congress, becomes federal law under the Compact Clause. It is an essential precondition that the approved State legislation be an *agreement* between States. *Cuyler* dealt with a clear agreement between States, the *Interstate Agreement on Detainers. Cuyler* does not expressly or implicitly hold that any uniform law, adopted by more than one State, is "an agreement" as that term is used in the Compact Clause. If that was the case, then Congress, simply through expression of

its general approval, could transform any model law enacted by more than one State into federal law.

Agreements within the scope of the Compact Clause were defined by Justice Field in *Virginia v Tennessee, supra:*

> The legislative declaration will take the form of an agreement or compact when it recites some consideration for it from the other party affected by it, for example, as made upon a similar declaration of the border by the contracting state. The mutual declaration may then be reasonably treated as made on mutual consideration. *Id.* 519-520.

The Interstate Compact on Detainers, considered in *Cuyler, supra,* meets Justice Field's definition; the UCEA does not. There is no obligation in the UCEA requiring extradition of non-fugitives, thereby creating any expectancy or right in the demanding state to obtain the individual. The UCEA makes such extraditions wholly discretionary. There is no mutual consideration among States which have adopted the legislation. At most there is a uniform statutory provision in states which have adopted the model language without modification.

Long ago, this Court adopted the view that extraditions falling outside the scope of the Extradition Clause or its federal enabling legislation, 18 USC § 3182, were within the power of the individual states to address. *Cf. Innes v Tobin,* 240 US 127 (1916). In *New York v O'Neill,* 359 US 1 (1958), this Court decided, without reference to the Compact Clause or Congressional approval, that the individual states were free to enact uniform legislation on the subject of interstate rendition of witnesses in criminal cases. Against this background, it is clear that the

UCEA is simply a vehicle for the exercise of inherent power possessed by each of the individual states and not a vehicle to create new powers via agreement between the states.

Petitioners seek review by this Court of a decision of the Michigan Supreme Court construing those circumstances in which the Governor of Michigan may exercise his discretion to extradite a non-fugitive under state law. No federal question is presented.

II. Certiorari Should Not Be Granted Because No Special Nor Important Reason Exists For Review Of The Decision Below.

Petitioners argue that the Michigan Supreme Court's decision contradicts decisions of other State courts interpreting the non-fugitive provision of the UCEA. To support this contention, Petitioners rely upon the decisions in *Conrad v McClearn,* 166 Colo 568; 445 P2d 222 (1968); *McCullough v Darr,* 219 Kan 477; 548 P2d 1245 (1976) and *Newman v Elrod,* 72 Ill App 3rd 616; 391 NE2d (1979) *cert den,* 445 US 942 (1980). Petitioners have misperceived each case.

In *Newman,* (*supra*), plaintiff sought to challenge, factually, the merits of the demanding State's charge of conspiracy, an offense which by definition entails an element of specific intent. Unlike *Newman,* the charge against Respondent in Maryland has no specific intent element. The Illinois Court addressed the issue of whether a factual inquiry by the asylum State, on the merits of the offense charged in the demanding State, was proper. The Michigan Supreme Court decided an entirely different issue not presented in the *Newman* case.

Conrad and *McCullough*, (*supra*), considered whether or not the documents supporting the extradition sufficiently alleged that the defendant committed an act intentionally resulting in the charged offense in the demanding State. Neither decision specifically addressed whether it was the act or the crime which must be intended.

In contrast to Petitioners' claim, where other State courts have addressed the issue for which review is now sought, the decisions are consistent with the Michigan Court's interpretation. In *Sheriff, Clark County v Thompson*, 85 Nev 211, 213; 452 P2d 911 (1969) it was stated:

> The first inquiry which must be answered under the Uniform Act is whether the accused had to be present in the demanding State at the time the crime was allegedly committed in that State. We hold that such presence is not required by the Uniform Act. NRS 179.189 [§ 6a of UCEA] empowers the Governor of Nevada to surrender upon demand of the executive authority of any other State any person or property charged with *committing an act in this State, or in a third state, intentionally resulting in a crime in the demanding State* . . .

To similar effect is *State ex rel Keller v LeVander*, 283 Minn 461; 168 NW2d 491 (1969) where it was stated:

> It is clear under the laws of Minnesota that as a prerequisite to the validity of an extradition it must appear that the person confined by virtue of the extradition warrant was actually present in the demanding State at the time the offense was committed or, if not, did *perform an act outside of the demanding State intending that the result be the accomplishment of a crime in such State.* Page 463.

Despite the contention of Petitioners and the Amici parties, wholesale damage has not been rendered to the

law applicable to extraditions outside the Extradition Clause. As the Amici parties state:

> The issue is solely one of whether the extradition papers are sufficient to bring the cause within the Governor's statutory, discretionary authority . . . Amici Brief, p. 11.

The asylum State Court's scope of inquiry into non-fugitive extradition has not been expanded by the Michigan Supreme Court and remains analogous to the scope of inquiry in a fugitive context. The courts of the asylum State enjoy the right, in a fugitive context, to consider in a *habeas corpus* proceeding:

> . . . (a) whether the extradition documents on their face are in order; (b) whether the petitioner has been charged with a crime in the demanding state; (c) whether the petitioner is the person named in the request for extradition; and (d) whether the petitioner is a fugitive. *Michigan v Doran,* 439 US 282, 289 (1978).

In a non-fugitive extradition, the fourth factor is no longer the determination of the fugitive status of the demanded individual, but the determination that the demanded person "committed an act in the asylum state intentionally resulting in a crime in the demanding state."

The status of the demanded person as a fugitive has always been considered a prerequisite to allowance of the extradition. *Cf. Innes v Tobin,* 240 US 127 (1916). Similarly, state courts have long recognized that the existence of acts outside of the demanding state intentionally resulting in a crime in the demanding state is a "jurisdictional fact" necessary to the valid exercise of a governor's power. *Cf. Hagel v Hendricks,* 302 SW2d 323

(Mo App 1957); *State ex rel Wayne v Hodman,* 292 Minn 358 (1972); *Commonwealth ex rel Aronson v Price,* 412 Pa 493 (1963). The Michigan Supreme Court has done nothing more than determine that the necessary jurisdictional fact was lacking as to Respondent. The Court did not, as is suggested by Petitioners and the Amici, expand the scope of inquiry by the courts of an asylum State.

RELIEF SOUGHT

WHEREFORE, for the foregoing reasons, a Writ of Certiorari should be denied.

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